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400.0000 PACKERS, LOADERS, AND SHIPPERS—Regulation 1630

See also Containers and Labels. Export packers, see also Interstate and Foreign Commerce.

(a) GENERALLY

400.0016 Bubble Pack, Styrofoam Pellets, and Styrofoam Sponges. Bubble pack, styrofoam pellets, and formed in place styrofoam sponges are packing materials. If sold to packers and shippers who use them to protect goods during shipment, tax applies to the sale, because packers and shippers are consumers of packing materials. If sold to persons who are also the sellers of the property shipped, they may be purchased for resale because the materials become part of nonreturnable containers which are resold with the property shipped. 8/23/88.

400.0020 Carbon Dioxide. Under section 6359.8, the sale to and use by the consumer of carbon dioxide used in packing and transporting fruits and vegetables for human consumption is exempt from sales and use taxes provided the fruits and vegetables are not sold to the ultimate consumer in a package that contains the carbon dioxide.

Therefore, the packer, loader, or shipper is the consumer of the carbon dioxide in providing the service. It may issue an exemption certificate with respect to such property where the sale and use satisfy the requirements of the exemption provided by section 6359.8. 3/14/95.

400.0028 Container Materials. To establish to the satisfaction of the Board that container materials have been sold by a shipper to its customer prior to use, the shipper must make a separate charge to the customer for the packing materials. The materials must not be returned to the shipper for reuse. The contract must expressly provide that title to the packing materials will pass from the shipper to the customer prior to the time the packing materials are used for packing. The express agreement must be in a document executed prior to the packing operation. The shipper is required to retain documents concerning time of passage of title. The title provision must appear on a document executed prior to packing. If the title provision appears only on an invoice, the shipper will have failed to establish that title to the packing materials passed to the customer prior to use. 4/18/77.

400.0032 Containers Sold to Commercial Packers. Tax does not apply to sales of nonreturnable containers without the contents to persons who engage in commercial packaging for others by placing those persons' products into the containers for subsequent sale. This has been the Board's long-standing interpretation of section 6364. The amendments to Regulations 1589 and 1630 that provide that tax does not apply to sales of nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sales were not intended to reverse prior administrative determinations or otherwise restrict the exemption. 3/5/97. (M99-1).

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- 400.0060 **Fruit Preservatives.** Fumold and Ethylene oxide gas placed in packed bags of fruit as preservatives during shipment are subject to tax. The packer or shipper makes a use of these items. 8/21/53.
- 400.0080 **Furniture.** Persons engaged in packing and moving furniture for others are consumers of the packing materials used in such activity. 1/7/55.
- 400.0120 **Lumber Used in Block Pipe Shipped in Railroad Cars,** regarded as consumed, not sold by vendor of pipe. 12/10/51.
- 400.0160 **Packing List and Envelope.** Shippers are regarded as consumers of packing lists which are enclosed with the merchandise and of the envelopes in which the packing lists are enclosed. 2/1/51.
- 400.0170 **Packing and Packaging Only.** The terms of Regulation 1630 also apply to persons who only pack and package but do not ship. 7/11/75.
- 400.0180 **Passage of Title.** Provisions such as “packing container charge includes container and materials which remain the property of the consignee,” and “packing rates include packing service of carrier furnished containers,” are insufficient to establish that the title to containers and packing materials passed to the customer prior to use by the carrier. Pursuant to Uniform Commercial Code section 2401, title passed at the destination since there was no explicit agreement to the contrary. 5/12/75.
- 400.0190 **Processing or Packaging for Purposes of Sale.** The provisions of Regulation 1630 are directed to persons who purchased tangible personal property to be used in containing the goods to be shipped and to preserve, protect, and contain the goods during transportation. The provisions of this regulation are not applicable where the preservation and packing of the goods for transportation is merely incidental to the performance of a sales activity. If the principal activity involves the sale of the goods or the processing or packaging of goods in individual containers for purposes of sale, then a resale certificate may be accepted to exempt the charge, notwithstanding the failure to comply with the provisions of Regulation 1630. 1/4/79.
- 400.0220 **Salt.** Carriers are consumers of the salt which they use to refrigerate merchandise for shippers. This is true even if they bill the shipper separately for such salt. The ice or dry ice exemption does not apply and the sale of the salt to the carrier is 100 percent taxable irrespective of whether or not the food products are shipped in interstate commerce. 10/14/54.
- 400.0224 **Shipping Containers—Sales to U.S. Government.** Shipping containers which are priced on the invoice to the customer based upon the hundred weight of the total shipment would become identified to the contract at the time the carrier withdraws them from inventory for the particular job. Such withdrawal satisfies the Uniform Commercial Code identification requirements. Therefore, if the three requirements of Regulation 1630(b)(2) were met, the sale of the container to the carrier would be for resale and the sale to the U.S. government would be exempt. One of the three requirements is that the contract

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specifically provides for the passage of title prior to use. In the past U.S. government contracts generally have not contained such a provision. Without such a provision, the shipper would be the consumer of the containers. 7/21/89.

- 400.0230 **Zeropacs Used in Shipping Live Brine Shrimp.** A taxpayer places frozen Zeropacs (refrigerant gel packs) in the cardboard box used in shipping live brine shrimp to its out-of-state customers. A separate charge is made to the customers for the Zeropacs which are reusable.

The activity of freezing the Zeropacs constitutes a use for shipping purposes. Thus, the taxpayer is liable for tax on its purchase price of the Zeropacs. 11/30/90.

(b) ICE AND DRY ICE

- 400.0240 **Aircraft.** Dry ice sold and used in refrigerating food served as meals on aircraft is not within the exemption of Section 6359.7. The statutory exemption only applies in cases where food products are shipped as cargo in the usual sense to an out-of-state destination. 4/18/55.

- 400.0260 **Fishermen.** Sale of ice to fishermen for preserving their catch of fish to be used for human consumption is exempt from the tax, if transported between a point or points beyond the territorial waters of this state and unloading docks in this state. 6/30/50.

- 400.0266 **Freezing and Preserving Nonfood Product.** A firm is engaged in the business of selling premixed, de-gassed, frozen epoxy (resin systems). The products must be quick frozen in mini tubes or polyethylene syringe type containers. The firm purchases dry ice. Twenty-five to thirty percent of the dry ice is used to quick freeze the product. The remainder of the dry ice is packed around the tubes and syringes to keep the product frozen during transportation to the customers.

Under these facts, the firm is the consumer of the dry ice whether it is used for quick freezing of the product or in the transportation process. In the processing, the dry ice does not become a component part of the resin system but rather it is used to freeze the product. The ice that is packed around the product for shipping is purchased primarily for the purpose of keeping the product frozen and not as a container. 4/24/87.

- 400.0280 **Liquid Nitrogen.** Liquid nitrogen is not within the meaning of the terms "ice" or "dry ice" used in shipping food products outside the state and is not exempt under Section 6359.5 (now 6359.7). 8/24/65. (Am. 2003-1).

- 400.0300 **Precooling.** Sales of ice used in precooling food products for human consumption for shipment in interstate commerce is exempt from sales tax. 9/28/55.

- 400.0320 **Precooling.** Ice used for precooling grapes to be shipped in interstate commerce is exempt from tax whether or not the grapes are held in storage prior to shipment, provided the grapes are not processed after precooling; the

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subsequent gassing of the grapes to prevent molding does not constitute further processing. However, the use of ice for storing grapes from the end of the harvest season until the date of shipment is a non-exempt use and all sales of ice delivered ten days after the harvest season are presumed to be used for such storage purposes. 7/19/61.

400.0340 **Processing, Use Before.** The exemption of ice applies only in the packing and shipping of food products in interstate commerce. It does not apply to ice used as cooling agents of products prior to processing. 3/2/56.

400.0360 **Processing, Use Before.** Ice is not exempt from tax under Section 6359.7 when used to cool a food product before it is sharp-frozen and stored until shipped out-of-state, which may be from one to 120 days after freezing. In the broadest meaning, the word “packing” could include all steps in the preparation of the article which is packed. But in Section 6359.7, the Legislature used the word in a narrower sense. This is apparent from the joining of “Shipping or transporting” with “packing” by the conjunction “and.” If the broad meaning were intended, the disjunctive “or” would have been used. Thus, the exemption applies to ice used in “packing and shipping,” and it is limited to ice used in connection with both packing and shipping. Where the ice is used and thereafter something remains to be done to the product prior to the shipping, the exemption is inapplicable. 3/11/59.

400.0380 **Shipping Non-Food Items.** A company engaged in heat-treating aluminum is the consumer of dry ice used for the purpose of keeping aluminum parts cold while shipping them to customers subsequent to treatment; it may therefore be purchased on a tax-paid basis and the charge made to customers on account of the ice need not be included in the measure of the tax declared and paid on its returns. 4/15/60.

400.0390 **Super Ice.** “Super Ice” is a chemical solution sealed in plastic containers which may be frozen and used as an ice substitute. When used by a fish company to preserve fish delivered to its customers, the “Super Ice” is considered as being used rather than sold to the customer along with the fish. It also does not qualify as a nonreturnable container since it does not contain the fish delivered but merely preserves the fish from deteriorating while it is delivered. Accordingly, the sale of “Super Ice” to the fish company is a taxable retail sale. 8/29/88.

400.0450 **Zero Pack.** The exemption from sales and use tax for ice and dry ice does not apply to Zero Pack. 10/19/77.

PAINTERS

See Manufacturers of Personal Property; Repainting and Refinishing.

PARTNERSHIPS

See Occasional Sales—Sale of a Business—Business Reorganization.

405.0000 PAYMENT OF TAX BY PURCHASERS—Regulation 1685

405.0015 Retailer's Failure To Collect Use Tax. A person purchasing property subject to use tax is required to report directly and pay the tax to the Board when the retailer fails to collect the tax. 1/15/75.

405.0018 Sale and Installation of Property by Out-of-State Retailer—Use Tax. An out-of-state retailer sells tangible personal property and ships it from out of state to the consumer in California. The retailer then sends an employee from the out-of-state location to this state to install the tangible personal property. It appears that the sale occurs outside California when the retailer ships the property to the consumer. Thus, the retailer's sale is not subject to sales tax. Rather, the California consumer's use of the property is subject to use tax, which it must pay to the State unless it remitted such amounts to the retailer and the retailer was registered with the Board to collect such tax. 1/16/97.

405.0020 Seller Not Holding Permit or Certificate. Under Regulation 1685, it is improper for a purchaser to pay California tax to a person who does not hold either a seller's permit or a certificate of registration—use tax. 8/1/69.

PENALTIES

See Interest and Penalties.

PERIODICALS

See Newspapers and Periodicals.

410.0000 PERMITS—Regulation 1699

See Person. Banks, need for permit, see also Banks and Insurance Companies.

(a) IN GENERAL

410.0010 Auction Sales—Determining Number of Sales. An auction may be a sale of one item or a sale of a "lot" (a number of items) to a single bidder. In either case, the transaction would be regarded as a single sale for purposes of the Sales Tax Law. As is commonly the case, an auction may consist of a number of sales of tangible personal property. The general rule is that each time the hammer drops there has been a sale. This is true whether there are sales to several bidders or several sales to the same bidder. Accordingly, an auction sale by a public administrator of the assets of an estate would require the holding of a permit if there are more than two substantial sales per estate during a twelve month period. Thus, if two substantial sales were made, a seller's permit is required even though only one or two auctions of the estate's property are held during a twelve month period. 9/7/84.

410.0011 Autographed Sports Memorabilia. Civil Code section 1739.7 was amended in 1995 to provide that certificates of authenticity must "indicate the last four digits of the dealer's resale certificate number from the State Board of Equalization." (Civil Code section 1739.7(b)(6).) The law further provides that "no person shall represent himself or herself as a dealer in this state unless he or she possesses a valid resale certificate number from the State Board of Equalization." Although the Board of Equalization does not enforce or administer the autographed sports memorabilia law, it has the duty to ensure,

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under the Sales and Use Tax Law, that persons selling sports memorabilia at locations in this state properly pay California sales tax. 5/3/96.

410.0020 City, Rules Applicable as to Need for and Number of Permits.

(1) All sales made by the City should be taken into consideration in determining whether sufficient sales are made to require a seller's permit, regardless of whether the sales are made in separate departments of the City. Thus, the general rule that three or more sales in a twelve-month period requires the holding of a seller's permit means, as applied to the City of "X," or any other cities, three or more sales irrespective of the fact that one or more of such sales is made by a different department of the city than made the other sales.

(2) Only one permit is necessary for the City on account of operations conducted within the City. Should the City engage in activities elsewhere, such as the operation of a commissary for employees at some area outside the City, a permit should be obtained for such location. If, however, the City desires separate permits for separate activities performed by the City within its limits, there would be no objection to accommodating the desires of the City in this instance.

(3) Transfers between departments of a single City do not constitute sales for purposes of the sales tax any more than in the case of transfers between state agencies, held by the Attorney General in an opinion issued a number of years ago not to constitute sales. The reasoning, equally applicable to cities, was that actually there was no change in ownership. The property would have been owned by the state before as well as after the transfer. The same would be true in the case of between departments of a single municipality, corporation, or other governmental entity. 9/14/51.

410.0040 Concessionaires. The intent of the regulation is to require tax accountability by a retailer operating a business within an area to all intents and purposes wholly under his control, for sales transactions by persons not holding seller's permits, but which the retailer allows to occur on such area and which, insofar as the public is concerned, might reasonably be believed to be his own transactions. 7/22/57.

410.0060 Concessionaires—Lessor's Liability. A mere landlord is not subject to the provisions which hold a retailer liable for tax on sales made by concessionaires not holding permits where various charitable organizations use the building for rummage sales. 4/16/64.

410.0067.750 Issuance of Permit to Minors. The Board of Equalization is precluded from issuing a seller's permit to a non-emancipated minor (minor). A minor is defined in Family Code section 6500 as a person under 18 years of age. Legal limitations on the ability of a minor to contract, to sue and be sued, and to delegate power are set forth under Family Code sections 6701 and 7050. There are also practical and physical limitations on a minor's ability to actively engage in or conduct business.

A minor may not generally enter into binding contracts, except under certain circumstances as provided in Family Code sections 6710 and 6712. The limited

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capacity of a minor to enter into binding contracts remains unaltered by the addition of a co-applicant, e.g., a parent, corporation, or limited liability corporation, on the minor's seller's permit application.

A minor may not be sued in his or her own name, nor may the minor settle his or her own legal claims. Additionally, although a co-applicant on the permit would arguably provide the Board with a responsible person against whom to enforce tax collection obligations, the co-applicant may request to be removed from the minor's seller's permit after it is issued. In such a case, the Board would not be able to effectively enforce payment of tax collection obligations against the minor as the holder of the seller's permit.

A minor is prohibited from being a partner in a California partnership, under Family Code 6701, because he or she lacks the legal capacity to give a delegation of power and a delegation by a partner to the other partners is required for partnership under California law. Accordingly, a minor cannot be a partner in a partnership applying for a California seller's permit.

Since a minor lacks the capacity to enter into binding contracts, to compromise claims, and to delegate authority, and because the addition of a co-applicant does not alter the inability of the minor to do so, the Board is precluded from issuing a seller's permit to a minor regardless of the addition of co-applicants on the application. 8/20/03. (2004-1).

410.0080 **Concessionaires.** A retailer who leases space on his business premises to concessionaires is responsible for the sales tax with respect to all operations in such premises, except as to those tenants or concessionaires who have obtained seller's permits from the board. 3/30/53.

410.0105 **Conversion of State Bank to Federally Chartered Bank.** When a California Corporation reorganizes into a federally-chartered bank pursuant to sections 5701 to 5708 of the Financial Code, it constitutes a transfer of business pursuant to Regulation 1699(f). While the transfer of assets is not a taxable sale because the transfer occurs by operation of law, the new entity is required to obtain a new seller's permit. 6/12/97.

410.0108 **Direct Payment Certificate.** Under Regulation 1699.5, a person applying for a direct payment permit must have gross receipts from sales of tangible personal property of at least \$75,000,000 and purchases of tangible personal property of at least \$75,000,000 in any calendar quarter during the twelve months immediately preceding the application for permit. At this time, no direct payment permits have been issued by the Board.

Therefore, since the Board has not issued any direct pay permits, a taxpayer's acceptance of a document characterized as a direct payment certificate will not relieve the taxpayer of liability for the applicable tax. 6/10/94.

410.0120 **Fixture Installer** is required to hold permit and file returns as retailer, even though he purchases his fixtures on a tax-paid basis. 10/19/50.

410.0140 **Flea Market Vendors.** Individual flea market vendors who rent booths at an established market place are required to obtain a seller's permit. As

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retailers, their receipts from all sales are subject to sales tax even though they may not return to the market place regularly. 10/9/67; 12/26/67; 5/5/81.

410.0160 **Fraud.** Even though the person holding the retailer's permit was an agent rather than the principal and was fraudulently induced by the principals of the business to procure the permit in his own name, the board has a right to rely on the voluntary act of the permittee and hold him responsible for taxes accruing under such permit. 11/15/63.

410.0166 **Inactive Permits.** A person is not liable as a predecessor under Regulation 1699 for the unpaid tax liability under the following circumstances.

(1) The person had no actual or constructive knowledge that he was a permit holder under the permit; therefore, the person would not have "actual or constructive knowledge" that the other person used the permit.

(2) There is no evidence that he completed any forms necessary to obtain the permit.

(3) The person's name is not listed on the permit.

(4) There is no evidence that the Board staff was even aware of the person's former connection to the business until he applied for a permit for his new business two years after the tax liability accrued. 11/9/90.

410.0167.500 **Issuance of Permits to Emancipated Minors.** The Board is precluded from issuing a seller's permit to a person that has not reached the age of 18 years, except when that person is emancipated. This is because a minor that is not emancipated lacks the legal capacity to enter into a binding contract, give a delegation of power, sue or be sued, or compromise, settle, or adjust a claim. The Board may, however, issue a permit to an emancipated minor since an emancipated minor has the capacity to, among other things, (i) enter into a binding contract or give a delegation of power (ii) sue or be sued in the minor's own name and (iii) compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor. 8/6/99. (2000-2).

410.0170 **Jig Grinding and Boring.** Jig grinding and boring is an activity resulting in the producing and fabricating of tangible personal property under Regulation 1526 and persons engaged in such activity are required to hold a seller's permit. 1/8/93.

410.0175 **Limited Liability Company.** A Limited Liability Company applying for a seller's permit is only required to provide detailed information, i.e., name, address, telephone number, identification number, for those members that will be managing the Limited Liability Company. Thus, if a corporation is not involved in the management of the Limited Liability Company, its federal income tax number is not required on the seller's permit application. 3/4/97.

410.0178 **Medical Marijuana.** An application was submitted to the Board to obtain a seller's permit for the purpose of selling "vitamins, air purifiers and medicinal marijuana." Since the applicant was selling "tangible personal property of a kind the gross receipts from the retail sale of which are required to

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be included in the measure of the sales tax,” the club qualified as a “seller” as defined by Revenue and Taxation Code section 6014. Therefore, the permit was issued to the club even though the application submitted by the club’s proprietors indicated that some of the sales would include “medical” marijuana.

Although the cultivation and use of marijuana by certain persons on the recommendation of a physician was decriminalized by the enactment of the “Compassionate Use Act of 1996,” the sale of, or possession for sale of, marijuana (for medical purposes or not) is still illegal under California law. Since 1996 the Board has adopted a policy of not issuing seller’s permits to a person or persons who will engage solely in the sale of marijuana. In addition, the sale of “medical” marijuana is not an exempt sale of “medicine” because it is not “commonly recognized as a substance or preparation for medicinal use” as required by Revenue and Taxation Code section 6369. Even if marijuana were regarded as a medicine, the sale of marijuana, when sold without a prescription from a licensed physician or when furnished by other than a licensed medical facility, does not meet the requirements for exemption from sales tax as set forth in Regulation 1591, subdivisions (a)(9) and (d).

The Sales and Use Tax Law authorizes the Board’s imposition and collection of tax measured by gross receipts from the reported illegal sale of “medical” marijuana. Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state, except as specifically exempted by statute. Revenue and Taxation Code section 6901 further provides that it “shall be presumed that all gross receipts are subject to tax unless the contrary is established” Nothing in the Sales and Use Tax Law specifically excludes from taxation the gross receipts from the sale of contraband or illegal substances.

When a person informs the Board in an application for a seller’s permit that it plans to sell “medical” marijuana or “medical” cannabis, the Board has been put on notice that the seller is engaging in an illegal enterprise. The Board does not condone illegal activity. The Board should inform the applicant that although a seller’s permit will be issued for the sale of legal tangible personal property, the permit does not allow for the sale of “medical” marijuana or other illegal merchandise. If “medical” marijuana is sold, its sale is subject to tax. 12/9/02. (2003-3).

410.0180 Misrepresentation on Application. Incorporators of a business who, after incorporation, represent that they are conducting the business as a partnership when applying for a seller’s permit cannot assert the corporate character as a defense to a determination issued against the partnership. 11/12/64.

410.0190 News Releases and Copywriting. A public relations firm which writes news releases and writes the words for brochures, but does not provide artwork or printing is not engaged in the type of activities that require the holding of a seller’s permit. 8/19/88.

410.0192 Notification of Withdrawal of Partner. Regulation 1699(e) sets forth the manner in which permit holders must give notice to the Board of changes in

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ownership or discontinuance of a business. The mere publication of notice in a newspaper of general circulation is not sufficient, nor is it sufficient notice of a partnership for a person who was a partner in a business and signed sales tax returns as “partner” to then sign the returns as “owner.” 11/21/72.

- 410.0193 **Notice to Board.** A firm operated as a partnership. It incorporated but did not notify the Board of the change. Later, the corporation was adjudicated bankrupt under Chapter 7.

The partners maintain that the issuance of corporate checks to pay taxes reported on returns and the issuance of resale certificates by the corporation was sufficient notice to the Board to relieve it from liability under Regulation 1699.

Neither the issuance of corporate checks nor the issuance of resale certificates by the corporation can reasonably be construed to provide the required notice. The partners, therefore, remain liable for tax under Regulation 1699. 3/12/87.

- 410.0194 **Notice to the Board.** A partnership was dissolved by written agreement and a notice of dissolution was published in a newspaper of general circulation. No actual notice of dissolution was given to businesses which had direct dealings with the partnership. One of the partners was, by agreement, to continue the business as a sole proprietor and pay all the bills.

A notice of dissolution published in a newspaper does not constitute notice to the Board as set forth in Regulation 1699(e). In *Credit Bureaus of Merced County v. Shipman*, 167 C.A. 2d 673 (1959), the court held that “. . . as to firms having prior credit dealings, with the partnership, actual notice of dissolution is necessary. While publication may be evidence from which actual knowledge could be inferred, publication above would not compel a finding of actual knowledge. A retiring partner is not justified in placing sole reliance upon the publication of notice of dissolution, but should assure himself that existing creditors who have extended credit to the partnership receive actual notice of such dissolution.” As the State of California is, in effect, a creditor, it should receive actual notice of a partner’s leaving the partnership before that retiring partner is relieved of his personal liability for the debts of the partnership. In order to avoid predecessor liability, actual notice must be given to the Board. 7/23/79.

- 410.0194.850 **Partner’s Liability.** A withdrawing partner will remain liable to the Board for any unpaid taxes or other debts payable to the Board until the partner notifies the Board of such action. Notice to another state agency does not constitute notice to the Board. The withdrawing partner will be liable for any tax liability incurred by the partnership subsequent to the withdrawal and until the Board receives such notice. 12/16/92.

- 410.0195 **Permits.** Company A and Company B form a partnership, Company C, for the purpose of manufacturing certain building components. C is not located in California, and A holds a California seller’s permit. A is a selling agent for C. As long as A is C’s selling agent, C is a retailer engaged in business in this state and must register with the Board. C is responsible for collecting use tax on retail sales

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in California and remitting the tax to the state. If, however, C is selling the property to A and A is reselling it on its own behalf, C would not be represented in this state and would not be required to register with the Board. A would be making sales and would be responsible for the payment of sales tax on the gross receipts from retail sales in this state. 3/31/94.

410.0197 Predecessor and General Partner Liability. The addition of section 6071.1(a) and section 6487.2(b) to the Sales and Use Tax Law is not effective against tax liabilities which became “due and payable” within the meaning of section 6451 prior to January 1, 1994. Once the liabilities became “due and payable,” the state had a “vested right” to taxes from a permit holder who transferred a business without notice to the Board. In *Estate of Stanford* (1899) 126 Cal. 112, the court held that the Legislature was barred from retroactively reducing taxes where the right to those taxes had vested in the state.

Accordingly, once the taxes became “due and payable,” a predecessor, who transferred a business without notifying the Board, became liable for the tax pursuant to Regulation 1699. Subsequent legislation, which reduces the period over which the predecessor liability extends, is ineffective as to that liability.

Likewise, the section 6487.2 amendments which establish a statutory period in which a determination must be issued against a partner who has withdrawn from a partnership and limits the period of liability is not effective as to liabilities which became “due and payable” prior to January 1, 1994. 4/4/94.

410.0198 Predecessor Liability. A husband and wife were co-owners of a coffee service that sold cups and spoons. A determination was issued for the period of January 1, 1982 through January 15, 1983. The wife stated that she had no personal liability for the debts. Documentation submitted by the wife disclosed that she and her husband were separated on September 22, 1980 and filed for divorce proceedings, on December 11, 1980. On March 10, 1981, as part of the divorce proceeding, the court ordered the business transferred to the husband personally. The actual transfer of the business was accomplished on November 6, 1981. The notice of partnership dissolution was not published until March 30, 1982, which was also the date of the final decree of divorce. The seller’s permit was revoked on September 24, 1981, for failure to pay a delinquent liability. The husband paid the delinquency plus a reinstatement fee on November 17, 1981, and the permit was reinstated. The husband signed the reinstatement application as “co-owner,” so the Board’s records continued to show the entity as a husband/wife co-ownership.

While the permit was inactive, the wife had transferred her interest in the business to her husband. Eleven days later, the husband reinstated the permit. There is nothing in the record to indicate that the wife had actual or constructive knowledge that the husband reinstated the predecessor permit rather than obtaining a new permit in his own name. Lacking such knowledge, the wife cannot be held liable as a predecessor. 4/13/89.

410.0200 Ownership Change Requiring New Permit. Change in general partners requires application for new permit number. 6/19/52.

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410.0202 Refusal to Issue a Seller's Permit. The Board does have a legal basis for refusing to issue or revoking a seller's permit when state law makes it illegal to sell tangible personal property at the particular location in question. A person cannot legally engage in business as a seller at locations where selling is forbidden by state law (including state regulations which have the force and effect of law). The legal basis is that a party to an illegal enterprise cannot require the Board to issue, or to continue in good standing, a seller's permit which specifically grants the privilege of engaging in the illegal enterprise. The Board's staff discretion must be exercised so as not to confer permissive authority on a person to embark on, or to continue, an illegal activity. (*Asher v. Johnson*, 26 Cal.App.2d 403). 9/30/85; 7/15/96.

410.0203 Registration of Limited Partnership. Since the adoption of the California Revised Limited Partnership Act, operative 7/1/84, limited partnerships are not to be registered in the partnership name, as it is a "dba" and should be shown as such on the seller's permit. The names of all general partners should be shown on the application as owners, with a list of all limited partners included for file information. A new permit must be issued each time there is a change in the general partners of a limited partnership, but not if the change is in limited partners only. 5/14/87.

410.0205 Retailer—Minimum Sales. Absolute uniformity or equality in the application of tax measures is not required if a distinction is based on a rational basis (*Ladd v. State Board of Equalization*, 31 Cal.App.3d 1009.) Therefore, an administrative practice of treating persons making retail sales of less than \$150 per month as consumers, while persons in the same situation who make retail sales in excess of \$150 per month are treated as retailers, is not a denial of equal protection of the law. 12/18/75.

410.0209 Separate Entity Permit Requirements. Corporation A is wholly owned by Corporation B and exists as a corporation in name only. It has no employees of its own and has no bank accounts. Ninety-nine percent of its business is with its parent and it draws no profit therefrom. Corporation A charges no mark up on sales between A "and its customers" (its parent and its accommodation customers). Corporation B pays for much of the expenses to operate Corporation A and Corporation A does not actually generate any revenue for itself.

It is apparent that Corporation A has failed to comply with the basic requirements for obtaining and holding a seller's permit. Under the facts in this case, the Board will not regard Corporation A as a separate person from Corporation B unless it actually creates a separate identity, with employees, accounting systems, and bank accounts. It must also add a mark up on its sales, and invoice all customers. Otherwise, no seller's permit will be issued to Corporation A and the board will disregard its existence for purposes of sales and use taxes. 11/4/96.

410.0212 Single Lease and Subsequent Sale of Leased Assets. A limited partnership has its main office located in Illinois. Its principal business is buying

PERMITS (Contd.)

real property for long term investment purposes and then leasing the property. For the period in which the following transaction occurred, it did not have a California seller's permit or file California sales and use tax returns.

In mid 1971, the partnership purchased the assets of a hotel with a bar and restaurant in California from a finance company which had acquired it by foreclosure or repossession. Although the hotel assets included some tangible personal property in addition to the realty, the partnership did not pay sales tax reimbursement to the seller or use tax to the State with respect to the purchase. Simultaneously with the purchase or soon thereafter, the partnership leased all of the assets to the same corporation that had previously owned the hotel. The Corporation was given full authority and responsibility for operating the business and presumably held a seller's permit for such operations.

In December 1973, the partnership sold all the hotel assets to an unrelated company. Although the partnership made only two sales in any 12 month period, the lease of the hotel's fixtures and equipment and its subsequent sale, the two sales are sufficient to require the partnership to hold a seller's permit. Under section 6066, a person must hold a permit if it is "engaged in business" as a seller regardless of the number of sales. In this situation, the partnership was engaged in the business of leasing tangible personal property. The lease of the hotel assets, including the tangible personal property, was unquestionably entered into with the object of gain, benefit or advantage, and this comes precisely within the statutory definition of "business." The ongoing nature of the lease also indicates that it was a business activity rather than a casual or isolated transaction. While leasing tangible personal property may not have been the partnership's principal business, it was nevertheless a business activity and required the holding of a seller's permit.

As regards to Regulation 1595 which states that persons who make three or more sales are "generally" required to hold a permit, it does not state that persons who make fewer sales are necessarily exempt from the permit holding requirement. Also, the lease is not an occasional sale under Regulation 1595 which is defined to include a "sale of property not held or used by a seller in the course of activities for which he is required to hold a seller's permit" Since the partnership's lease of the hotel assets required the holding of a seller's permit, the lease was not an occasional sale under this section. For the same reasons, the partnership's sale of the hotel assets was not an occasional sale. That the partnership owned a hotel and was engaged in a leasing business in California provided sufficient nexus for taxation. 12/9/80.

410.0214 Subsidiaries Required to Hold Separate Permits. A parent company and each of its subsidiaries are persons and sellers within the meaning of sections 6005 and 6014. Section 6452 provides that every seller or person liable for sales or use tax is required to file a return with the Board. There are no statutory provisions authorizing the combination of returns or the consolidation of filing by separate but related companies. The parent company and each of its subsidiaries is required to hold a permit and file its own sales and use tax returns. 7/30/97.

PERMITS (Contd.)

410.0218 Trust Incorrectly Using Trustor's Permit. A grantor trust has purchased vehicles for the purpose of leasing and has issued a resale certificate, using the beneficiary/trustor's seller's permit number. Tax has been reported on rental receipts on all vehicles, using the trustor's Sales and Use Tax return as a conduit of payment.

This procedure is incorrect. The trust may not issue a resale certificate using another entity's seller's permit number, nor report tax liability on another's tax return. The trust should obtain its own permit and issues certificates, where appropriate, with its own permit number shown. 6/3/89.

410.0220 Tour Groups. A tour agent rents a bus on a weekly basis and takes groups of people to three venues. Each group stops at a hotel for lunch. The charge per person for the tour includes transportation, luncheon, and anything else that may be done during the day (i.e., breakfast danish while on the bus). Monies due the bus company and restaurant are paid in advance.

The above activities will not require the tour agent to hold a seller's permit since the company is not making any sales to the groups patrons of tangible personal property which are subject to sales and use tax. However, if for example, the company were to serve meals to the group instead of taking the group to a hotel, the company would be required to hold a seller's permit. 4/28/82.

410.0240 Ownership Change Requiring New Permit. Where permit is in name of "X, a Business Trust," a reduction in the number of trustees does not result in change of entity requiring a new permit as the business trust continues as the same entity under Section 6005. 7/9/51.

(b) PERSONS MAKING NONTAXABLE SALES

410.0246 Artificial Eyes. A company, whose sole function is to manufacture and fit artificial eyes on patients referred by ophthalmologists, questioned whether it is required to register as a seller and hold a seller's permit. All fittings are done pursuant to the order or prescription of an ophthalmologist. The question was in light of the October 1, 1977 amendments to section 6369 and Regulation 1591 exempting sales of artificial eyes and their replacement parts.

Prior to October 1, 1977 ophthalmic or ocular devices or appliances were specifically excluded from the term "medicines." Effective October 1, 1977, section 6369 was amended to add "artificial eyes or their replacement parts" to the term "medicines." As a result of this amendment, artificial eyes or their replacement parts which are furnished pursuant to a written order of a physician shall be deemed to be dispensed on prescription and their charges are exempt from tax when furnished to patients by companies such as this one. However, under Revenue and Taxation Code section 6018, to the extent that this company only furnished artificial eyes, eye markers, and sclera lenses pursuant to the written order or prescription of an ophthalmologist, it does not sell tangible personal property the gross receipts of which are subject to tax. As such, this company will not be required to register with the Board as a seller. 4/21/81.

PERMITS (Contd.)

410.0250 Persons Making Nontaxable Sales. Persons selling “medicines,” as that term is defined in Section 6369(b) of the Revenue and Taxation Code, are required to hold seller’s permits even though all of their sales may be exempt under Section 6369(a) of the code. “Medicines” are not a property of a kind the gross receipts from the retail sale of which are not subject to the tax. It is the circumstances under which the property is sold which may result in an exemption. 11/9/71.

410.0280 Containers and Labels. Person selling containers and labels, even under exempt conditions, is required to hold a permit. His sales are of property not exempt because of its nature, but because of a particular use. 5/27/52.

410.0300 Fertilizer. A person selling fertilizer is required to hold a seller’s permit even though all sales may be exempt as sales for resale or for application to land, the products of which will constitute food for human consumption.

The fact that under certain circumstances retail sales of fertilizers are taxable requires the holding of a seller’s permit pursuant to Section 6066 requiring all sellers to hold permits and Section 6014 defining seller. Inasmuch as persons selling fertilizer are “sellers,” they are under Section 6015 “retailers” with respect to any retail sales made, that section providing in part that the term retailer includes “Every seller who makes any retail sales or sales of tangible personal property.” 3/12/52.

410.0320 Fish Market selling only fish for human consumption is tax exempt and needs no seller’s permit. 10/17/50.

410.0325 Installing Customer Provided Signs. A contractor who only installs customer provided signs that are classified as “fixtures” under Regulation 1521 and does not perform any fabrication of the sign prior to installation would not be required to obtain a seller’s permit. If, however, the contractor performs fabrication labor prior to installation or furnishes property which is not considered “material” within the meaning of Regulation 1521, the contractor would be required to hold a seller’s permit and report and pay sales tax to the Board on such charges. 1/24/94.

410.0340 Polishers engaged exclusively in the business of polishing metal articles for persons who resell the polished articles are not required to hold a seller’s permit. 5/17/50.

410.0360 Sales for Resale. Corporation A, licensed to do business in California, manufactures an item outside of California and stores it in a warehouse in California. Corporation B, licensed in California, from time to time purchases the items from Corporation A and sells it to various California distributors.

Neither corporation incurs sales tax liability as sales by each are sales for resale. No use tax liability is incurred if the property is at all times being held for sale and not used or consumed by either corporation in this state.

Both corporations should, however, hold a seller’s permit even though all sales are sales for resale. 3/21/55.

PERMITS (Contd.)

410.0380 Sales Made Exclusively for Foreign Export. A seller's permit is not required where all a retailer's sales are made for foreign export. In this case the retailer should issue a resale certificate to his vendors, in the form set forth in Regulation 1668, noting on the certificate that a seller's permit is not required because of "all sales are for export." 12/14/89.

410.0390 Sales of Unprocessed Wool. An agricultural cooperative is required to hold a seller's permit on sales of raw wool and goat hair at retail even though such products cannot be used until they are processed. 9/3/77.

410.0395 Sales to U.S. Government. Taxpayer performs services for the U.S. Navy. It is required to purchase non-construction materials for the government's warehouse inventory. Title to the property purchased passes to the Navy upon receipt by taxpayer and prior to any use by it.

It is not necessary that the seller maintain a stock of goods in order to be a seller required to hold a permit. Further, a seller is required to hold a permit even though all sales are made to the U.S. Government. (Regulation 1699(b)). 2/22/90.

410.0410 Trusts. In order to obtain a permit in the name of the trust, the trustee must establish the existence of a trust. Generally, an oral declaration of the trustee, standing alone, is not sufficient evidence.

Satisfactory evidence that the trust exists is necessary for issuance of a seller's permit in the name of the trust. This should include evidence of a bank account in the name of the trust, a copy of the lease contract for a business premises by the trust, proof of the purchase of resale inventory by the trust, written authorization of the person applying for the permit acting on behalf of the trust, or any other similar evidence. 8/8/89.

410.0900 Veteran's Exemption. The veteran's exemption provided under section 16102 of the Business and Professions Code applies only to business license fees and other charges. Its application does not extend to state sales taxes. Also, since there is no fee for a seller's permit, section 16102 is not relevant to the issuance of a seller's permit to a veteran. 6/22/95.

415.0000 PERSON

| See also *Permits*. Foreign governments as, see also *Foreign Governments and Consuls*. Incompetent persons, see also *Hospitals, Institutions and Homes for the Care of Persons*.

415.0020 Buying Club. A buying club is to be formed with appropriate bylaws and officers. The club will purchase merchandise from wholesalers and resell to its members at a specified markup. Profits will be used in part to operate the club and to buy items for the club's use. Excess profits will be credited ratably to the members or held to provide scholarships. On these facts the club qualifies as a person which may be issued a seller's permit. 9/22/67.

415.0040 Cooperative Marketing Assn., held to be a "person" under Section 6005. 11/24/50.

PERSON (Contd.)

415.0060 **Corporations.** Two corporations with the same officers and stock ownership, one engaged in selling building materials and the other engaged in business as a construction contractor derive financial benefits from transactions between themselves. Inasmuch as they have not agreed to conduct a single business enterprise jointly they have no community of interest nor do they share profits and losses from a single joint enterprise, they are separate “persons” and not a joint venture. Accordingly, transfers of building materials by one corporation to the other are taxable retail sales. 9/14/67.

415.0080 **Jointly Owned and Operated Gas Plants.** Jointly owned and operated gas plants, created by independent oil companies to process their natural gas at cost, but which are not corporations, partnerships, associations, etc., as those terms are legally defined, are nevertheless persons as defined in Section 6005, i.e., “any other group or combination acting as a unit,” and hence, separate entities for purposes of Sales and Use Tax Law. Although these plants were not operated for profit, “gain, benefit or advantage” accrued to the owners in the form of reduced operating costs and expenditures plus conservation of resources. Thus, as persons, all the plants’ processing charges constituted taxable gross receipts from retail sales. 3/4/68.

415.0085 **Joint Venture.** A person owns a gasoline service station. He or she enters into an agreement with another person to operate the station. The owner purchases gasoline in his or her own name for delivery into the tanks of the station. The operator pays to the owner the cost of the gasoline plus \$100 per month or \$0.03 per gallon, whichever is greater.

The parties are regarded as having formed a joint venture, and they are individually liable for the debts of the joint venture. 1/20/75.

415.0093 **Joint Venture—Characteristics.** An artist and a printer “collaborated” to produce lithographs. The artist maintains that there was not a sale of the artwork to the printer, but rather the two were engaged in a joint venture.

A joint venture is a special combination of two or more persons without corporate or partnership designation, formed for the purpose of jointly seeking a profit in a specific venture, and for which purpose they combine their property, money effects, skill, and knowledge. There must be proof of a community of interest and a sharing of profits and losses, and each venturer must have a right in some measure to direct the conduct of others through a fiduciary relationship that must exist.

If these tests are met, the relationship will be considered a joint venture rather than one of seller and buyer. 2/17/72.

415.0100 **Joint Venture and Partnership with Common Members.** Four businesses formed a joint venture to bid and construct an underwater subway tube. After the contract was awarded to the joint venture, the same parties making up the joint venture formed a partnership having as its purpose the ownership of equipment to be chartered to other parties working on the same project. Based on

PERSON (Contd.)

law and facts, the partnership and the joint venture are separate and distinct persons for purposes of Sales Tax Law because they hold separate meetings, file separate returns for property and income taxes and have separate and distinct labor agreements. They are considered separate entities by the Internal Revenue Service and for purposes of Workmens' Compensation insurance premiums. They maintain separate accounting records and books, and use different accounting methods. 10/27/69.

415.0108 Liability for Use Tax on Purchases. In order for use tax to apply to a purchase of tangible personal property for use in this state, the sale must be not subject to sales tax and the purchase must be from a retailer. In the progression of definitions in the sales and use tax law, a "retailer" must be a "seller," and a seller must in turn be a "person" as defined in section 6005. The only governmental units included in "person" are the U.S. Government, this state, and political subdivisions of this state. Not included are foreign governments and other states and their political subdivisions. As a result, purchases from foreign governments, other states and their political subdivisions including their college and university systems, are not subject to use tax. 8/23/94.

415.0110 Limited Liability Companies. At least eight states have authorized a business structure called limited liability companies. These organizations are neither partnerships nor corporations. This state has neither recognized nor regulated this ownership concept. However, such organizations are clearly "persons" under section 6005 and must hold permits if they engage in selling activities in California. In the absence of legislation or case law, there is no authority to impose the company's unpaid tax liability on the company's owners. The seller's permit should reflect the nature of the organization and the state law under which it is authorized. 10/18/93.

(Note: Statutory change re California limited liability companies.)

415.0112 Maquilladora. A maquilladora is a corporation organized under Mexican law that is owned by an American business. Typically, the American business will ship raw materials to the maquilladora which will process the raw materials and ship the final product back to the American business.

As a separate corporation, the maquilladora is a person separate from the American owner. The sales and use tax applies to transactions between the two as it would between any other separate entities. 4/20/87; 9/22/93.

415.0113 Massachusetts or Business Trusts. The Massachusetts or Business Trust is neither a corporation nor a partnership. It is an organization using a common law trust for the purpose of conducting business. Section 6005 of the Sales and Use Tax Law includes the definition of "person" . . . "trust, business trust" . . . "trustee." Applicants for permits using this business structure should be required to furnish a copy of the document setting up the trust and personal asset information should be obtained from each trustee and they should be advised that each will be liable for the full business liability. 9/22/93.

PERSON (Contd.)

415.0115 Purchases by Individual Partners for Benefit of the Partnership. Two construction firms enter into a joint bid for construction work. Each will be responsible for different aspects of the work. Each is jointly and severally liable to the customer for all aspects of the work. The combination of two firms is considered a “person” for sales and use tax purposes. However, the individual joint venturers are not purchasing the property for resale to the joint venture under the joint venture agreement. Rather, the individual joint venturers purchase the property for their own use in complying with their joint venture agreement. 10/13/82.

415.0120 State Agencies. “Sales” between state agencies do not constitute “sales” within meaning of Sales Tax Law, as only one “person” is involved. 11/2/50.

415.0123 States of the United States. Neither sales nor use tax applies to sales by, or purchases from, sister states. Tax does apply to sales made by, or purchases made from, organizations whose members are states of the United States. Thus, tax applies, for example, to sales made by the Multistate Tax Commission.

Sales made by and purchases made from the State of California are taxable. 6/8/90.

415.0126 Statutory Period—Unpermitted Division. The definition of “person” in section 6005 includes a corporation, but does not include unincorporated divisions, which are nothing more than internal sub-units not having a separate legal life. A corporation, having some divisions holding permits and filing returns, and one division which is neither, is considered to be a “person” that has filed a return for those periods, since each person is only required to file one timely return per period. The statute of limitations for the issuance of a deficiency determination for any liability of the unpermitted division is three years in the absence of conclusive evidence that the taxpayer’s failure to report the liability of this unit was due to fraud or intent to evade the law. The eight year limitation period applies only if a “person” fails to file a return. 1/29/69.

415.0140 Student Body held to be a person within meaning of Section 6005. 5/11/51.

415.0180 University of Minnesota Press. The University of Minnesota Press is an agency of the State of Minnesota and as such is not a “person” under Section 6005. Accordingly, the University of Minnesota Press is not a “retailer engaged in business in this state,” under Section 6203. 5/18/67.

415.0300 State Universities. Sales by one state university to another are not “sales” for sales and use tax purposes. The universities are part of a single legal entity (Cal. Educ. Code sections 66,000 et. seq.) On the other hand, sales by state universities to private colleges or community colleges are taxable unless otherwise exempt. 7/9/85.

PERSONAL PROPERTY

See Tangible and Intangible Property. Leases of, see Leases of Tangible Personal Property—In General.

PHARMACISTS

See Prescriptions Medicines.

420.0000 PHOTOGRAPHERS, PHOTOSTAT PRODUCERS, PHOTO FINISHERS AND X-RAY LABORATORIES—Regulation 1528

See also Motion Pictures. Documents and records, furnishing copies of as sale or service, see also Service Enterprises Generally.

(a) IN GENERAL

420.0040 Photographers—In General—Aerial Photographs and Photomaps (Controlled Mosaics). Aerial photographs are photographs of objects, ground areas, highways, etc., taken from the air. Aerial photographs are produced by use of airborne equipment and the usual photographic processes and carry distortions as to scale and as to positions of objects on the photographs. They are distinguished from photomaps in that the photomap is one of the end products of an aerial survey using precise engineering procedures including the establishment or identification of control points of latitude and longitude, the computation of engineering data by stereoscopic measurements and the rectification of photographic images. The furnishing of aerial photographs is a sale of tangible personal property. The sales price of the aerial photograph would be the gross receipts for furnishing the photographs with no deduction for flight costs, photographer's time, material, etc.

Aerial surveys are airborne surveys of ground areas for the purpose of (1) obtaining engineering data with respect to ground surfaces, contours, and improvements; (2) obtaining data with respect to magnetic fields and intensities; or (3) obtaining gravitational data. Aerial surveys are distinguished from flights made for the purpose of producing aerial photographs or mosaics (noncontrolled) in that an aerial survey is a professional undertaking employing precise engineering procedures and resulting in precise engineering reports or maps such as photomaps, planimetric maps, topographic maps, magnetic maps, and gravimetric maps. Receipts from aerial surveys are not taxable whether the results of such surveys are transmitted by means of photomaps or by means of tape, disc, or other computer-generated output.

Engineering services are the services involved in a survey or mapping project which has as its end the preparation of a map to conform with geodetic or other control and include the establishment of control points of latitude and longitude, identification of the points on photographs and computations of distances between points and elevations to precise engineering specifications through the use of engineering formulas and stereoscopic measurement. Persons who conduct surveys requiring engineering services are the consumers of the tangible personal property used in connection therewith including the maps, reports, and other materials furnished the client.

PHOTOGRAPHERS, ETC. (Contd.)

Mosaics (noncontrolled) are made by assembling vertical aerial photographs of approximately the same scale representing contiguous areas, matched at common points. The composite photograph of such assemblies is called a mosaic or noncontrolled mosaic. It is distinguished from a photomap in that the mosaic is not precisely engineered and is intended as a visual representation of the area rather than a presentation of exact engineering data. Gross receipts for furnishing mosaics are receipts from the sale of tangible personal property.

Photomaps are one of the principal end products of aerial surveys using precise engineering procedures, including the establishment of control points of latitude and longitude, the computation of engineering data by stereoscopic measurements, the exact rectification of photographic images, and the preparation of a photographic map showing geophysical data and geographic positions true within minute tolerance. They are distinguished from aerial photographs in that aerial photographs are merely visual representations not intended to present exact engineering data and not prepared by professional procedures such as would produce dependable engineering data. The aerial survey resulting in a photomap uses a substantial amount of professional engineering services and results in engineering data; the production of an aerial photograph requires the use of aircraft and crew, photographic equipment, and photographers but no professional engineers and results in a mere picture or group of pictures. Receipts from conducting an aerial survey and furnishing photomaps are considered charges for rendering professional services and the aerial surveyor is the consumer of the tangible personal property used in the survey and the reports, charts, and photomaps furnished the client in connection with the survey.

Reproductions of maps, that is, copies printed from an original of a hand-drawn map or a photomap, are regarded as self-consumed tangible personal property only if such reproductions are furnished pursuant to an original contract involving engineering services. Receipts from the transfer of reproductions under such circumstances are not subject to the tax. 9/26/72; 12/31/73; 9/24/91.

420.0045 Aerial Surveys. The transfer of mylar negatives produced for aerial surveys is a transfer of tangible personal property and tax applies to charges for such negatives. The true object of the purchaser of the negatives is not the information on or in the negatives but the negatives themselves. The aerial photographer merely flies the aircraft as necessary to properly use the highly sophisticated camera and other equipment so as to perform the photographic services and thereafter produce negatives. The photographer does not produce any final product map. He merely produces an intermediate working product used by engineering companies to produce engineered maps. The fact that the mylar negatives do not contain distortions does not result in them constituting photo maps. (Annotation 420.0040). 5/14/92.

420.0072 Copies of Public Records. The furnishing of copies by a county of certain public records which are required to be furnished under sections 6256 and 6257 of the Government Code are exempt from sales tax notwithstanding the fact

PHOTOGRAPHERS, ETC. (Contd.)

that there may be no statute or ordinance setting forth the fees that are to be charged for such copies. The county merely charges a reasonable fee.

However, the exemption does not extend to multiple copies. If a person wants more than one copy of the document, the charge for making the additional copies would be subject to tax. This is based on the fact that section 6256 of the Government Code only requires that a single copy be supplied. 5/18/72.

420.0080 Coupon Charge and Handling Fee. Charges for photographs which included the charge for a coupon and handling fee were subject to sales tax because the total amount represented the gross receipts from the sale of the photographs. 4/13/70.

420.0082 Creating New Print. A customer provides a photographer with a photograph of his wife in which one of his wife's eyes was closed, and he wanted it opened. The photographer created a computer generated image, opened the eye, and printed the image to photographic film. The photographer used the negative to make a finished print to sell to the customer. In this case, tax applies to the photographer's entire charge, including the charge to alter the customer's print, because it was not merely a repair of the customer's defective print; rather, it resulted in the sale of a new print. Also, the photographer is the consumer of the materials used to create the negative and sales or use tax is due on the sales price to the photographer. If the computer created image on disk is sent to an outside company to create the negative for the photographer, the charge made to the photographer for creating the negative is subject to sales or use tax. 2/17/95.

420.0085 Departmental Manuals and Photograph Reprints. A state agency sells three categories of property: (1) manuals and guides primarily intended for internal or allied agency use, (2) manuals and handbooks primarily intended for public sale and use, and (3) photograph reprints of traffic accidents.

In general, tax does not apply to charges for copies which the agency is required by law to furnish including any documents requested pursuant to Public Records Act. Sales of documents not requested pursuant to the Public Records Act are subject to tax. Therefore, the sales of the manuals and guides designed for public use are subject to tax unless they are the result of a specific request pursuant to the Public Records Act.

Since requests for photograph reprints are pursuant to the Public Records Acts, sales of such reprints are not subject to tax. The state agency should pay tax reimbursement to its vendors or pay use tax on its acquisition of the reprints. It may include the cost of this tax expense when it bills the requester but may not separately state an amount as tax, tax reimbursement, or the like. 8/15/80.

420.0090 Photographers—Rental of Transparencies. The rental of photographic transparencies that have been developed from exposed raw film is taxable as a sale. The rental is taxable because the property is not rented in the same form as acquired by the lessor who purchased and exposed the raw film. The item being leased is the raw film which was exposed by the photographer

PHOTOGRAPHERS, ETC. (Contd.)

and, accordingly, changed substantially in form. This application of tax is correct even though the lessor may have paid sales tax reimbursement to the lab that developed the slide.

On the other hand, if the item leased is a print of the exposed film which was purchased tax paid from the processing laboratory, the print would be leased in substantially the same form as acquired. 1/10/91.

420.0096 Employee or Independent Contractor. A photographer works for a dating service. Although the dating service sets the photographer's hours and provides the studio facility, they treat the photographer for income tax purposes as an independent contractor. When a customer applies for service with the dating service, there is a set charge which involves the development of a biography and photo for placement in the dating service's directory which is for the use of customers. When the customer signs up for the dating service, he completes a standard biographical sketch and part of the fee is collected at that time. The balance is collected when the photo is taken.

The dating service sets an appointment time for the customer to have his photo taken. When the photographer takes the photo, she collects the balance of the dating service fee (made payable to the photographer). The photographer then pays over to the dating service a fixed amount of the charge and provides the photograph to the dating service for use in the directory. The amount retained by the photographer is her payment for shooting and providing the photos to the dating service. No photos are provided to the customers as part of the charge made. However, if the customer is interested in prints of the photo taken, the dating service refers him back to the photographer who then makes a sale of the prints to the customer.

Based on the facts presented, the photographer is an independent contractor and not an employee. Thus, the photographer contracts to sell photographs to the dating service and the gross receipts consist of the amount retained by the photographer from the payment that the photographer accepts on behalf of the dating service from its customer. Sales tax, of course, is due on any amount that the customer pays to the photographer for prints sold to that customer. 10/17/96.

420.0100 Extra Poses. Separately stated charges labeled "extra poses", which a portrait photographer makes in order to reimburse himself/herself for cost of retouching negatives and extra sitting expenses, represent overhead costs incurred in the production of photographic portraits which he/she sells. Accordingly, such charges are includable in the taxable gross receipts of the photographic portraits. 11/21/67.

420.0110 Film Used to Produce Driver's Licenses. A taxpayer has a contract with the California Department of Motor Vehicles (DMV) to print state driver's licenses. Under the contract, the taxpayer is to provide 35mm color negative film and equipment to DMV. DMV employees expose the film and return it to the taxpayer. The taxpayer develops the film and makes a positive which becomes part of the driver's licenses produced by the taxpayer for DMV. The license and

PHOTOGRAPHERS, ETC. (Contd.)

a microfilm copy are returned to DMV and the negatives are stored by taxpayer until DMV requests that they be destroyed.

Since there was no separate statement on the bill for the film and the contract specifically stated that taxpayer is to retain title to the film, the film was not sold to DMV prior to any use by the taxpayer. The fact that, by contract and for security reasons, DMV severely restricted the use of the film once the licenses were printed does not determine which entity holds title to the film. Accordingly, tax applies to the purchase price of the film to the taxpayer. 9/30/91.

420.0125 Internegative and Print. The sale by a photographer of an internegative and a print shipped to an out-of-state customer pursuant to the contract of sale is exempt as a sale in interstate commerce.

However, since the photographer makes a print from the internegative prior to the exempt sale in interstate commerce, the sale of the internegative to the photographer or the photographer's use of the internegative is subject to sales or use tax.

Alternatively, if the photographer were to transfer title to the negative prior to any use, the sale to the photographer would be a sale for resale but the photographer's sale to the customer would be completed in this state prior to any interstate shipment. The photographer's sale of the internegative would thus be a taxable retail sale in this state.

However, the sale of the print would not be subject to tax if the sale meets the requirements of the interstate commerce exemption provided the photographer does not make any use of the print in this state. 1/21/94.

420.0130 Landsat Mosaics. Landsat is a remote sensing satellite which produces pictures of the earth's surface. Landsat mosaics are constructed by skilled technicians registering the individual scenes to a known map projection. They carefully overlap the scenes so that features seen on the earth's surface form a much larger, continuous image. They splice all of the scenes together, combining them into one or more sheets. The mosaics show a large area of the earth and are used for regional planning. All work is done to a customer's specifications.

Since the above work does not involve the services of a professional engineer, the vendor is making a sale of tangible personal property when performing this work. The work is similar to mosaics (noncontrolled) prepared by assembling vertical aerial photographs (annotation 420.0040). 3/16/89.

420.0132 Lease of Photograph. A person who is in the business of providing photos of a variety of subjects sells the right to publish the photo. The sale of such rights is a "lease" for sale and use tax purposes. If the property furnished is a print on which tax has been paid to the film processing lab, the lease of the print is not subject to tax as the property is leased in substantially the same form as acquired and tax has been paid. However, if the property furnished is a transparency, tax applies to the lease since it is not leased in substantially the same form as acquired. 2/26/86.

PHOTOGRAPHERS, ETC. (Contd.)

420.0134 Microfiche Copies of X-Ray Films. Because of limited on-site storage areas and the prohibitive cost of accessing x-ray films stored off-site, hospitals are replacing x-ray films with microfiche images. The replacement is made several years after the x-rays are produced. Since the microfiche copies are primarily made to replace the existing x-ray film with a smaller one to save space rather than for direct purpose of diagnosing medical or dental conditions of human beings, the total charge for such microfiche copies is subject to tax. 6/16/88.

420.0140 Microfilm. Microfilm, which is itself sold to customers and which is not used for the purpose of producing prints for sale to customers, may be purchased ex-tax under a resale certificate. 1/5/61.

420.0149 Microfilm with and without Processing. Retail sales of black and white microfilm sold without processing are subject to tax. Retail sales of black and white microfilm sold with processing and billed lump sum are subject to tax on the entire amount charged. Retail sales of black and white microfilm sold with processing with the charges for the microfilm and processing separately stated are subject to tax on the entire amount. The sale of the microfilm itself is a straightforward transfer of title to tangible personal property for a consideration. The processing is a processing of customer-furnished property. This is fabrication labor which is regarded as a sale under section 6006(b) of the Revenue and Taxation Code.

The exclusion provided for developing negatives only applies when the processing involves the use of separate negatives and processing. It does not apply to processing microfilm or the reverse processing method. 6/16/71.

420.0155 Microfilming Charges. Company A engages Company B to perform mail room services consisting of receiving, sorting, opening, and batching mail documents. A also engages Company C to microfilm documents. C is owned by B and uses the same employees to do the microfilming. The charge for microfilming is a taxable sale of tangible personal property and includes the charges for services that are part of that sale, such as related mail room services. However, the charge for the mail room services will not be subject to tax if: A contracts separately with B and C; statutory requirements have been met in forming B and C as separate entities; B and C's use of the same employees is in accordance with applicable law and with each company's by-laws; and the charge for the mail room services is not increased by decreasing the microfilming charge. 12/6/94.

420.0160 Microfilming of Records. Sales tax applies to the entire charge made for microfilming records. 7/9/53.

420.0165 Negatives Used to Make Photo Maps. Use tax applies to the purchase of "ortho negatives" from an unpermitted out-of-state vendor, even though the negative contains an image of a photo map. The transfer of a photo map is not a sale, but rather the transfer of intangible information developed by aerial survey.

PHOTOGRAPHERS, ETC. (Contd.)

The photo map is the means by which the intangible survey data is transferred, while the ortho negative is a manufacturing aid used to produce the photo map. 2/7/91.

420.0166 Photocopying Hospital Records. A person engaged in the photocopying business contracts with hospital clients to photocopy and provide hospital records sought by third parties such as patients, health care providers, and attorneys. The person furnishes the hospitals with computerized billings for the photocopies which the hospitals send to third parties. The hospitals retain collection responsibilities with respect to the billings.

Under such an arrangement, the relationship between the photocopy business and the hospital is not that of principal and agent but rather principal and independent contractor. The hospital is the retailer under these circumstances and should furnish the photocopying business with a resale certificate in connection with these sales. The sale of these photocopies by the hospitals are subject to tax unless they are provided under sections 1563 and 1158 of the Evidence Code as set forth under Regulation 1528(a)(2). 5/24/84.

420.0168 Photograph Purchases for Resale. A taxpayer maintains an inventory of photographs for copying by customers. In some instances, the customer selects a photograph, reproduces it and incorporates the reproduction into a product which the customer sells. The customer is the consumer of the photograph and the sale to the customer is a taxable retail sale.

In other cases the customer selects a photograph and purchases the reproduction rights, but does not actually reproduce it. Instead, the customer charges its client a fee for finding and furnishing the photograph. The client reproduces the photograph. The sale to the customer is a sale for resale. The sale by the customer to its client is the retail sale.

In other cases, the customer is unable to find a suitable photograph. The customer is billed a service fee to cover research costs. The customer then issues a billing to its client. Since there is no sale of tangible personal property, there is no tax. 11/4/93.

420.0169 Photographic Documentation Service. A taxpayer photographs personal property and structures for possible insurance claims and tax purposes. The taxpayer supplies the film and performs the photography. It also stores the negative film (long term, no extra charge), and grants the customer the right to order prints (photos) of the images on negative film as required, for which there is a reasonable charge plus sales tax. A flat fee is charged for the original photo transaction.

Where the contract with the customer states that the film remains the taxpayer's property, the original photo documentation session would be a service transaction, not a sale and, thus, the charge for this session is nontaxable. The taxpayer is the consumer of the film and other property used in providing this service. On the other hand, where title to the film does not pass to the customer but slides are given to customer if the customer wishes as a "free service," then the transfer of possession of the slides or any tangible product of the original

PHOTOGRAPHERS, ETC. (Contd.)

session would result in the entire charge being taxable. In the same situation, if the customer is allowed to buy the slides for a small charge rather than receiving them “free of charge,” the sale of the slides would be taxable. The tax also would apply to the entire charge to the customer for the original photo session. 2/3/81.

- 420.0170 **Photographic Image.** The transfer of a photograph through a remote electronic wire service is not a transfer of tangible personal property. Charges for such service is nontaxable.

“Remote” means that the transmission must occur from premises other than that of the receiver. 11/26/91.

- 420.0173 **Photographs.** A photographer provides a newspaper or magazine publisher with photographs that are reproduced in the relevant publication which is subject to sales tax when sold.

Since the publisher uses the photograph in creating the publication, the sale or lease of the photograph in this state is a retail sale subject to sales or use tax. This is true even though the sale of the newspaper or periodicals by the publisher is also subject to sales tax. A photograph does not become an ingredient or component part of the publication merely because the photographic image is reproduced in the publication.

The sale of photographs to an advertising agency is also a retail sale unless the advertising agency is purchasing the photographs for resale to its customer prior to use. In that case, a resale certificate is required stating that the specific property is being purchased for resale in the regular course of business.

The photographer may purchase for resale slide transparency film that is processed into slide photographs prepared as “speculative stock shots” and held solely for resale in the regular course of business provided no use is made of the film prior to resale. If the photographer uses the slides to make positives, the sale to the photographer is a retail sale because the film will be used as a manufacturing aid in producing prints.

If the photographer makes any use of property other than demonstration and display for purpose of resale, the photographer is responsible for reporting and paying use tax measured by the sale price of the property to the photographer. The destruction of the “speculative stock shots” which did not sell is not considered a taxable use. 9/21/92.

- 420.0175 **Photographs for Shoe Catalogs.** Photographer contracts to take photographs for use in a catalog of shoes. The photographer provides only a studio, film, and a camera. Out of approximately 100 photographs taken, only about 15 are ultimately used in the catalog. The remainder are taken for light placements or test shots.

Although the photographer’s charge includes a charge for many photographs not used, Sales and Use Tax Law Section 6012(a) require the photographer to include the total amount received as taxable. 9/24/91.

PHOTOGRAPHERS, ETC. (Contd.)

420.0176 Photography Sales on Board Cruise Ships. A business operates aboard a cruise ship that makes daily trips from San Diego to Ensenada, Mexico. It takes photographs of passengers and develops, prints, displays and sells the photographs from its retail store on the ship. It also sells cameras, film, frames, and batteries from the store. The business also purchases photographic equipment outside California for use on the ship.

Property which is sold to customers, including materials which become a component part of photographs, may be purchased by the business for resale. Sales tax applies to the sale of such property to customers on sales made within the three mile limit. If the sales occur outside the state, the business is required to collect use tax from California customers unless they certify that the property will be used only at a specified point outside the state.

Materials used in the process of making photographs and which do not become an ingredient or component part thereof should not be purchased for resale.

Photo equipment purchased outside the state for use aboard the ship is subject to tax if the first functional use is in the state or if the principal use (including storage) is inside the state. 11/10/94.

420.0177 Pick-up and Delivery of Photocopies. When a person is not authorized to purchase photocopies from law enforcement agencies, the person acquiring them is acting on behalf of the authorized person. Accordingly, the pick-up and delivery charges in connection with acquiring such photocopies are excluded from the measure of tax. The transfer of the photocopy by the governmental agency also is not subject to tax because it is a mandatory act under the related statute. 3/25/70.

420.0178 Preparation and Service of Subpoenas. A taxpayer bills its customer a "basic charge" and a "subpoena prep" charge in connection with serving a subpoena and copying the records subpoenaed. The taxpayer's "basic charge" is subject to tax since it is a service which is a part of the sale of the photocopies made following the service of the subpoena duces tecum. However, regardless of what a taxpayer calls the preparation and service of subpoenas, such charges which are fairly allocated to the actual preparation of a subpoena, as well as the service of subpoenas, are nontaxable charges. It does not matter whether the charge is referred to as a "service charge" or as "subpoena preparation" charge. 7/25/88.

420.0179 Radar Images. The custom processing, dodging, printing, and mosaicking of existing radar film into digitally plotted film positives is a sale of tangible personal property when such work does not involve the services of a professional engineer. 3/6/89.

420.0180 Reproduction Rights. An additional charge by a professional photographer for rights to reproduce the photograph sold is includable in the photographer's gross receipts. The theory is that the intangible right to use the photograph adheres to the personal property being sold. 9/24/64.

PHOTOGRAPHERS, ETC. (Contd.)

420.0220 **Reproduction Rights.** Charge for use of photographs by publication companies for reproduction, even though returned after one use, is regarded as a sale if the photograph has been treated so harshly that it is not reusable after its return to the photographer. (Effective July 15, 1991, leases for one time use of photographs to newspapers are subject to tax.) 11/5/52.

420.0260 **Reproduction Rights.** A charge for the right to use a photograph for reproduction purposes is part of gross receipts subject to tax without regard to the manner in which the charge is segregated. It is also immaterial whether the right of reproduction granted upon the sale of the photograph is unlimited or restricted. This is by analogy to *Thys et al. v. State of Washington*, 199 P. 2d 68. In that case, the court held that a yearly charge designated in the contract as “royalty” for the right to use a machine could not be separated from the amount designated as “purchase price” paid to obtain title. The total amount paid by the purchaser is considered the selling price of the machine and taxable as such. 5/26/50. (Am. 99-2).

420.0289 **Retailer Donates Portion of Sales Price.** A photographer sells packages of photographs for \$17.00. The photographer has an agreement with the Little League that he will donate \$2.00 from the sale of each package to the Little League.

Since the purchaser cannot purchase a package for \$15.00 by withholding the \$2.00 “donation,” the selling price for each package is \$17.00. Thus, the entire charge for the package is subject to tax. 9/22/95.

420.0295 **Services Performed in Microfilming Records.** As a part of microfilming customer records, taxpayer reviews files/records to select records for microfilming. Taxpayer also removes paper clips, staples, etc., and repairs torn documents. The service is charged on an hourly rate.

Since the preparation of the documents is necessary in order to produce the microfilm, the charge for the preparation is includable in the gross receipts of the sale of the microfilm. 12/2/91.

420.0300 **Sitting Fees.** Sitting fees charged by portrait photographers are taxable when finished pictures are purchased. If no pictures are obtained such fees are nontaxable as a service fee. Where a customer retains the proofs, all sitting fees should be considered as the taxable selling price of the proofs. 4/24/57.

420.0303 **Sitting Fees—Make Up Artists.** A beauty salon contracts with its customer to provide hairstyling, make-up, and one photograph for \$29.95. The taxpayer provides the make-up artist and photographer who will take pictures of the salon’s client and give her the one “sample” photograph. The taxpayer receives \$9.95 which it characterizes as “sitting fees,” contending that it is selling a nontaxable makeover service and that the “sample photograph” is free.

The firm’s business logo indicates it is in the glamour photography business. Additionally, most of its income is derived from selling additional photographs. The facts, therefore, indicate that the makeover is incidental to the transfer of the photograph. The entire amount received for the “sitting fee” is taxable. 6/18/97.

PHOTOGRAPHERS, ETC. (Contd.)

420.0310 Still Photography. A company, whose seller's permit indicates that it is a commercial artist selling photographic images and videos, requested information regarding the application of law to the following questions regarding still photography.

(1) Can one photographer purchase another photographer's photographs using a resale certificate?

If the actual photograph purchased by the photographer will be resold to the client prior to any use by the photographer or if it will be physically incorporated into the property produced by the agency that will be resold, the photographer may purchase the photograph ex-tax by issuing a resale certificate.

(2) Can one photographer purchase another photographer's labor using a resale certificate?

If the photographer provides all materials used by the other photographer to produce tangible personal property that will be sold to the client prior to any use, there is no "sale" since only fabrication for a consumer is a "sale." Since the second photographer is not making a "sale" to the photographer, he/she is not really making a sale for resale. Nevertheless, the best way to prove that the labor was not for a consumer is to take resale certificate.

(3) Photographer A who has an out-of-state client, hires Photographer B to shoot photos for his/her client. Does Photographer B charge Photographer A sales tax?

If the photos will be resold or will be incorporated into the property to be resold prior to any use, Photographer A may purchase the photos ex-tax by providing a resale certificate.

(4) Can a photographer use his/her resale certificate to purchase photographic materials that are to be sold exclusively out of state?

Yes, provided the photographer makes no use of the materials prior to the resale.

(5) If a client leases the rights to reproduce photographic images but the photographer maintains possession of the original images, does the photographer charge sales tax to the client?

If the photographer retains the negatives and transfers to the lessee a photograph, some tangible personal property is being transferred. If the client is not obligated to return the same photograph provided to the lessor, the transfer of the photograph would be a sale and subject to tax. If the client was required to return the photograph, it would be a lease and tax applies as explained in Regulation 1660.

(6) If a client supplies all the photographic materials to the photographer, does the photographer charge sales tax for his/her labor?

Under the definition of a sale, Section 6006 (b), the photographer is making a "sale" of the photographs and that sale would be taxable even though all of the materials may have been provided by the client.

PHOTOGRAPHERS, ETC. (Contd.)

(7) Does a photographer's assistant have to charge the photographer sales tax for his/ her labor?

Assuming the assistant is not an employee of the photographer, the application of tax depends upon whether the assistant is making a retail sale of tangible personal property to the photographer. If the sale is at retail, the sales tax applies. If the photographer resells property purchased from an assistant prior to any use by the photographer, the photographer may purchase the property ex-tax for resale. The photographer's full charge for the sale to his client is subject to tax, with no deductions on account of the amount paid for the services provided by the assistant in the production of the property.

(8) Does the photographer have to collect sales tax on a photographer's assistant's labor?

As stated in Number 7, a photographer cannot deduct his labor costs from the selling price before computing sales tax. Sales tax is due on the entire selling price of retail sales of tangible personal property.

(9) On a large photography shoot involving labor of several positions hired by the photographer (i.e., make up, models, stylists, etc.) does the photographer have to collect sales tax on the labor of all these positions?

As stated above, the measure of tax is based upon the gross receipts of a retail sale. Tax applies to charges for services rendered that represent services that are a part of a sale of the property, or a labor or service cost in the production of the property. These positions are an expense in the creation of the property to be sold to the client and thus the costs are included in the measure of tax.

(10) Should sales tax be collected on postage and handling which includes the cost of postage and a markup on envelopes and labor?

If a separately stated charge is made designated "postage and handling", only that portion of the charge which represents actual postage may be excluded from the measure of tax. 10/20/93.

420.0320 Test Film—Spoilage of Film. A person engaged in reproducing images on raw film is the consumer of film used by him for the purpose of conducting tests to adjust the equipment in order to attain the final picture negative or used in any of the intermediate steps. However, if the original intent is to sell particular raw film to the customer and if the film is discarded only because of spoilage, then the film is not considered consumed. 7/9/58.

420.0325 Third Party Furnishing Copies of Records. A hospital receives a subpoena or authorization letter to furnish copies of records. The hospital sends the subpoena or authorization letter to a copying service and makes its records available, at no charge, to the copying service. The copying service then performs the copying, delivers the copies to the requesting party, and bills the requesting party. Given such facts, tax applies to all charges by the copying service to the requesting party. Since the hospital did not make any charge to the copying service, the copying service cannot make a nontaxable statutory charge pursuant to sections 1158 or 1563 of the Evidence Code, regardless of how such charge is stated to the requesting party. 11/30/88.

PHOTOGRAPHERS, ETC. (Contd.)

420.0340 Unreturned Prints. Where a photographer takes photographs of school pupils, has the negatives developed and sends the prints to the school for forwarding to parents of the pupils, the photographer is not liable for tax on the cost of prints which are accepted but not paid for by the parents. 12/14/65.

420.0343 Unexposed Film Received in Connection with Film Processing. A photo finisher distributes unexposed rolls of photographic film to customers who contract to have the photo finisher develop exposed film and to produce prints therefrom. The unexposed roll of film is given to the customer at the time he places the order for developing and prints. A separate charge is made for the prints and for the developing. The developing charge is claimed to be nontaxable pursuant to Regulation 1528(b)(3)(a). No specific charge is made for the unexposed film. In some instances the customer fails to pick up the order and pay the agreed charges. No attempt is made to collect these charges.

Under the above situation, the unexposed film, the finished prints, and the developing service all represent consideration received by the customer in exchange for the payment of the agreed contract price. While the customer receives the unexposed film prior to the time he receives delivery of the prints and developing service, it is nevertheless clear that the customer receives the unexposed film only if he agrees to pay the price specified for the prints and the developing and not as a gratuity. Accordingly, the unexposed film must be regarded as sold rather than self consumed. This conclusion is not altered by the failure of the photo finisher to enforce collection with respect to persons who fail to pick up their finished prints and negatives. The failure to collect the contract price on these transactions is based on business expediency rather than the absence of a remedy.

The delivery of the unexposed film is considered to be a premium under Regulation 1670(c). This section also provides for an allocation of gross receipts to the retail sale of a premium sold with a food product or other item not subject to sales tax. Since the customer is required to pay the entire contract price in order to obtain the premium, it is consistent with Regulation 1670(c) to allocate a portion of the total contract price to the unexposed roll of film sold and delivered as part of the contract. 4/17/70.

(b) PROCESSING, RETOUCHING, ETC.

420.0345 Chemical Solutions. The following chemicals introduced into the nine bath system of negative development of microfiche (termed the full reversal process) may be purchased for resale, since the primary purpose is incorporation into the finished product:

- (1) FR AUTOCOM 1st developer
- (2) FR AUTOCOM 2nd developer
- (3) FR AUTOCOM fixer

Insufficient information was supplied to establish that any of the balance of the chemicals used in the process, were purchased for the primary purpose of incorporation into the microfiche. The processor is not regarded as having made

PHOTOGRAPHERS, ETC. (Contd.)

a taxable use of property simply because the property performs some processing in its course of its incorporation into the final product. On the other hand, property used in the course of processing is not regarded as having been resold without use simply because some portion of it remains incidentally as part of the final product (*American Distilling Co. v. State Board of Equalization* (1942), 55 Cal.App.2d 799). It is the taxpayer's responsibility to establish that the primary purpose of property, used in the manufacturing process, was for incorporation into the finished article in order to show that the property can be purchased without tax "for resale." (See *Burroughs Corp. v. State Board of Equalization* (1984), 153 Cal.App.3d 1152). 1/24/90.

420.0348 Color Overhead Transparencies. A firm prepares color overhead transparencies, based on hard copy outline notes, it receives from the customer. The true object of the contract is the transparencies produced and the total charge is subject to tax. 12/21/92.

420.0360 Color Film. Charges for developing negatives are not taxable, but if prints are furnished the entire charge is taxable unless a separate charge for developing negatives is made. Development of film by the reverse process method is not the negative development of film. Tax applies to charges for development of film by the reverse process method. 1/13/50.

420.0380 Color Film. Color film sold to a photographer which he exposes and sells as a finished picture is a sale for resale and not subject to the tax. 5/11/50.

420.0420 Coloring or Tinting of Photographs. Even if separately stated, tinting charges are taxable where the tinter is also the printer of the pictures and is not merely a finisher tinting pictures furnished by the customer. 4/8/52.

420.0440 Color Photo Finishing. Dye couplers and coupling agents used in color photo finishing which, as a matter of fact, become a component part of the finished product sold to the consumer may be purchased tax-exempt for resale. 5/26/64.

420.0448 Copyright Effects on Retouching Charges. For sales tax purposes, the fact that a customer obtains an intangible copyright interest in the image on a negative when the customer's image is reproduced on the negative does not transfer ownership of the tangible negative to the customer. Accordingly, when a third party retouches negatives for a photographer, such charges are for taxable retail fabrication labor type "sales." 5/10/85.

420.0480 Developing, Chemicals Used in. Kodak Film Developer SD-35 and Ektachrome Film Developer SD-39 become incorporated in the finished product and are exempt. 3/21/60.

420.0500 Developing, Chemicals Used in Negative/Positive Process. The correct interpretation of Regulation 1528(b) is that, when the negative/positive process is used by a photofinisher to develop exposed film furnished by the customer, sales tax applies to the sale to the photofinisher of all chemicals which are used in developing the film to a negative, regardless of how the photofinisher

PHOTOGRAPHERS, ETC. (Contd.)

bills his customer. The photofinisher uses the negatives, and the chemicals incorporated therein, to make prints prior to transferring the negatives to his customer. This intervening use makes the photofinisher the consumer of such chemicals, even though the chemicals may ultimately be transferred to the customer as part of the negatives. 10/31/69.

420.0520 **Dicolamine.** Dicolamine used in a method of color film processing becomes incorporated into the finished product, and accordingly, may be purchased tax-free for resale. 11/10/55.

420.0540 **“Dry-Developing” Method of Producing Diazotype Prints.** Diazotype prints are produced by means of the “dry-developing” or “ammonia-developing” process. The first step in this process consists of exposing sensitized paper to ultra violet light through a master print. Next, the exposed paper is treated with aqua-ammonia vapor, which combines with an acidic stabilizer on the sensitized paper, enabling unexposed Diazonium salts on the sensitized surface to combine with a coupler to form a dye image. Sales of ammonia for use in producing, by the above described method, prints which are sold are exempt sales for resale. 12/9/64.

420.0553 **Kodak Pro-Star Chemicals.** Kodak Pro-Star Plus Fixer and Kodak Pro-Star Developer, which are used in the developing of microfilm, are consumed in the development process and do not become physically incorporated in the manufactured product, the microfilm. Sale of the above chemicals to microfilm developers are subject to sales tax. 6/26/86.

420.0560 **Light Test Stock Used in Processing Film.** A film processing laboratory which uses light test film stock to adjust or balance the lighting of the customer’s film in order to produce the most desirable print is the consumer of the film stock and is liable for tax measured by the cost thereof. 1/3/68.

420.0580 **Negatives.** Charges for the development of Kodacolor negatives, if separately stated from the charges for making positive color prints, are not taxable as receipts from the sale of tangible personal property. 9/22/64.

420.0585 **Photographers—Retouching.** Tax applies to charges for retouching, coloring, and tinting customer owned pictures which are new; however, if the pictures are not new and the retouching, coloring and tinting is only done to repair or restore the picture back to its original condition, the charge is not subject to tax. 9/12/91.

420.0590 **Photographic Chemicals.** Following is a list of Kodak photographic chemicals, classified according to whether or not they may properly be purchased for resale. The list is applicable to photofinishers or photographic studios processing film by the negative/positive process or reverse processing. The list is also applicable to color separators who do not pass title to negatives to their customers prior to using the negatives to produce positives (prints). In the left-hand column of the list, the suffix “chrome” is applied to reversal materials, and the suffix “color” to nonreversal materials. The following ten chemicals,

PHOTOGRAPHERS, ETC. (Contd.)

which are classified in the list as not properly purchased for resale, may be properly purchased for resale by a color separator who passes title to negatives to his customers prior to using the negative to produce positives (prints):

1. Kodak Liquid Developer Process C 22
2. Kodak Liquid Developer Replenisher C 22
3. Kodak Hardener C 22
4. Kodak Hardener and Replenisher C 22
5. Kodak Internegative Replenisher
6. Kodak Flexicolor Developer
7. Kodak Flexicolor Developer Replenisher
8. Kodak Flexicolor Stabilizer and Replenisher
9. Kodak Vericolor Hardener and Replenisher
10. Kodak Vericolor Developer Replenisher

May Be Purchased For Resale

May Not Be Purchased For Resale

1. BLACK/WHITE FILM AND PRINTS

Toners:

Kodak Blue Toner
Kodak Brown Toner
Kodak Poly-Toner
Kodak Rapid Selenium Toner
Kodak Sepia Toner

Hardeners:

Kodak Acid Hardener
Kodak Liquid Hardener

Intensifiers:

Kodak Chromium Intensifier

Processing Aids:

Kodak Print Flattening Solution

Developers and Developer Replenishers:

Kodak D-11 Developer
Kodak D-19 Developer
Kodak DK-60a Developer
Kodak D-76, D-76R Developer
Kodak Microdol-X Developer
Kodak Durafin Developer Replenisher
Kodak Dektol Developer
Kodak Ektaflo Developer
Kodak Duomat Developer Replenisher
Kodak Flomatic Developer Replenisher
Kodak Hi-Matic Developer Replenisher
Kodak Versamat, Type A Developer Replenisher
Kodak Versamat, Type B Developer Replenisher
Kodak Versamat, Type C Developer Replenisher
Kodak Versaflo Developer Replenisher
Kodalith Developer

Developer Starters:

Kodak Developer Starting Solution
Kodak Versaflo Developer Starting Solution
Kodak Versamat Developer Starting Solution

May Be Purchased For Resale

May Not Be Purchased For Resale

1. BLACK/WHITE FILM AND PRINTS (Contd.)

Stop Baths:

Kodak Flomatic Stop Bath
Kodak Flomatic Stop Bath
Kodak Hi-Matic Stop Bath
Kodak Indicator Stop Bath

Fixers:

Kodak Ektaflo Fixer
Kodak Photo-Fix
Kodak Rapid Fixer
Kodak Flomatic Fixer
Kodak Hi-Matic Fixer
Kodak Versamat Fixer

Reducers:

Kodak Farmer's Reducer

Processing Aids:

Kodak Developer System Cleaner
Kodak Fixer System Cleaner
Kodak Hypo Clearing Agent
Kodak Photo-Flo Solution

May Be Purchased For Resale

May Not Be Purchased For Resale

2. EKTACHROME FILMS

Hardeners and Replenishers:

Kodak Ektachrome Movie Prehardener Replenisher A
Kodak Ektachrome Movie Prehardener Replenisher B
Kodak Ektachrome Film Hardener, Process E-3
Kodak Prehardener and Replenisher, Process E-4
Kodak Prehardner, Process E-4

Color Developer and Replenishers:

Kodak Ektachrome Movie Color Developer
Replenisher A
Kodak Ektachrome Film Color Developer, Process E-3
Kodak Ektachrome Film Color Developer Replenisher,
Process E-3
Kodak Color Developer, Processes E-3, E-4, and E-6
Kodak Color Developer Replenisher, Processes E-3, E-4,
E-6, E-6AR—Part B

Stabilizers and Replenishers:

Kodak Ektachrome Movie Stabilizer and Replenisher
Kodak Stabilizer, Processes E-3, E-4, and E-6
Kodak Stabilizer and Replenisher, Processes E-3, E-4,
E-6, and E-6AR

First Developers and Replenishers:

Kodak Ektachrome 40 Movie First Developer
Kodak Ektachrome 40 Movie First Developer Replenisher
Kodak Ektachrome 160 Movie First Developer
Kodak Ektachrome 160 Movie First Developer Replenisher
Kodak First Developer, Processes E-4 and E-6
Kodak First Developer Replenisher, Processes E-4
and E-6AR
Kodak Ektachrome Film First Developer, Process E-3
Kodak Ektachrome Film First Developer Replenisher,
Process E-3
Kodak Color Developer Replenisher, Process E-3

Neutralizers and Replenishers:

Kodak Neutralizer, Process E-4
Kodak Ektachrome Movie Neutralizer and Replenisher
Kodak Neutralizer and Replenisher, Process E-4

Stop Baths and Replenishers:

Kodak Stop Bath, Process E-4
Kodak Ektachrome Movie Stop Bath and Replenisher
Kodak Stop Bath and Replenisher, Process E-4

Bleaches and Replenishers:

Kodak Bleach, Processes E-4 and E-6
Kodak Bleach Replenisher, Processes E-3, E-4, E-6, and E-6AR
Kodak Ektachrome Movie Bleach and Replenisher
Kodak Ektachrome Film Bleach and Replenisher,
Process E-3
Kodak Bleach and Replenisher, Process E-3

May Be Purchased For Resale

May Not Be Purchased For Resale

2. EKTACHROME FILMS (Contd.)

Fixers and Replenishers:

Kodak Ektachrome Movie Fixer and Replenisher
Kodak Fixer, Processes E-4 and E-6
Kodak Fixer and Replenisher, Processes E-6 and E-6AR
Kodak Color Film Liquid Fixer and Replenisher

Clearing Baths and Replenishers:

Kodak Reversal Bath, Process E-6
Kodak Reversal Bath and Replenisher, Processes E-6 and E-6AR
Kodak Ektachrome Film Clearing Bath and Replenisher, Process E-3

Starters:

Kodak Bleach Starter, Process E-6
Kodak Ektachrome Movie Prehardener Starter
Kodak Ektachrome Movie First Developer Starter
Kodak First Developer Starter, Process E-6
Kodak Ektachrome Movie Color Developer Starter
Kodak Color Developer Starter, Process E-6

Miscellaneous:

Kodak Defoamer, Process E-6
Kodak Conditioner, Process E-6
Kodak Conditioner and Replenisher, Processes E-6 and E-6AR
Kodak Ektachrome Movie Color Developer Starter

May Be Purchased For Resale

May Not Be Purchased For Resale

3. EKTACHROME PAPER

Color Developers and Replenishers:

Kodak Color Developer; Ektaprint R, R-500
Kodak Color Developer Replenisher; Ektaprint R
and R-5, R-100
Kodak Color Developer Replenisher

Hardeners and Replenishers:

Kodak Ektaprint R Hardener Stop Bath
Kodak Ektaprint Formalin Fixer and Replenisher

Stabilizers and Replenishers:

Kodak Ektaprint R-500 Stabilizer
Kodak Stabilizer and Replenisher;
Ektaprint R, SR-5, R-100

First Developers and Replenishers:

Kodak First Developer; Ektaprint R, R-500
Kodak First Developer Replenisher;
Ektaprint R, R-5, R-100

Stop Baths and Replenishers:

Kodak Ektaprint R First Stop Bath
Kodak Ektaprint R-500 Stop Bath
Kodak Ektaprint R-5, R-100 Stop Bath and Replenisher

Bleach and Replenishers:

Kodak Ektaprint R-3 Bleach
Kodak Ektaprint R-500 Bleach-Fix
Kodak Ektaprint R-5 Bleach-Fix and Replenisher
Kodak Ektaprint R-5 Bleach-Fix Regenerator
Kodak Ektaprint Bleach-Fix Defoamer
Kodak Ektaprint Bleach-Fix and
Replenisher R-100

Starters:

Kodak Ektaprint R-5 and R-100 First Developer
Kodak Ektaprint R-5 and R-100 Color Developer
Kodak Ektaprint Bleach-Fix Regenerator and Replenisher

May Be Purchased For Resale

May Not Be Purchased For Resale

4. KODACOLOR, EKTACOLOR AND VERICOLOR NEGATIVES

(Processes C-22, C-41, and Flexicolor AR)

Developers and Replenishers:

Kodak Liquid Developer, Process C-22
Kodak Liquid Developer Replenisher, Process C-22
Kodak Ektacolor Print Film Additive
Kodak Flexicolor Developer
Kodak Flexicolor Developer Replenisher
Kodak Flexicolor Developer Replenisher I
Kodak Flexicolor AR Developer Replenisher
Kodak Vericolor Developer Replenisher
Kodak Internegative Replenisher
Kodak Internegative Starting Solution
Kodak Flexicolor Developer Replenisher,
Kodak Flexicolor AR Developer Replenisher

Hardeners and Replenishers:

Kodak Hardener, Process C-22
Kodak Hardener and Replenisher, Process C-22
Kodak Vericolor Hardener and Replenisher

Stabilizers:

Kodak Flexicolor Stabilizer and Replenisher
Kodak Ektacolor Print Film Stabilizer and Replenisher
Kodak Flexicolor and Flexicolor AR Stabilizer
Kodak Stabilizer and Replenisher Process C-22

Filtering Agent:

Kodak Vericolor Filtering Agent

May Be Purchased For Resale

May Not Be Purchased For Resale

4. KODACOLOR, EKTACOLOR AND VERICOLOR NEGATIVES (Contd.)
(Processes C-22, C-41, and Flexicolor AR)

Neutralizers:

Kodak Vericolor Neutralizer and Replenisher

Stop Baths and Replenishers:

Kodak Stop Bath, Process C-22

Kodak Stop Bath and Replenisher, Process C-22

Bleach and Replenishers:

Kodak Bleach, Process C-22, and Flexicolor

Kodak Bleach Replenisher, Process C-22,
Vericolor

Kodak Flexicolor AR Bleach Replenisher

Kodak Bleach Regenerator, Process C-22,
Vericolor

Kodak Bleach Test Reagent

Fixers and Replenishers:

Kodak Fixer, Process C-22

Kodak Fixer and Replenisher, Color Film
Flexicolor and Flexicolor AR

Kodak Vericolor Stop-Fix and Replenisher

Kodak Hardener and Replenisher, Process C-22

May Be Purchased For Resale

May Not Be Purchased For Resale

4. KODACOLOR, EKTACOLOR AND VERICOLOR NEGATIVES (Contd.)

Starters:

Kodak Bleach Starter

Kodak Developer Starter, Flexicolor and Vericolor

5. EKTACOLOR PAPER

Developers and Replenishers:

Kodak Developer, Ektaprint 2, 3 and 300

Kodak Developer Replenisher; Ektaprint 2 and 3

Kodak Developer Replenisher, Part C;

Ektaprint 2, 3, and 3HC

Kodak Ektaprint 3000 Developer Replenisher,
Part C

Stabilizers:

Kodak Stabilizer and Replenisher, Ektaprint
2, 3, and 3000

Developers and Replenishers:

Kodak Developer Replenisher, Part B,
Ektaprint 3000

Developer Starter, Ektaprint 2 and 3 HC

Ektaprint Developer Replenisher,

Parts A, B, D, Ektaprint 2 and 3

Ektaprint 3HC Developer Replenisher,
Parts A and B

Ektaprint 3000 Developer Replenisher,
Parts A, B, D

Developer Replenisher Additive

Bleach and Replenishers:

Kodak Bleach-Fix and Replenisher,
Ektaprint 2, 3 and 3HC

Kodak Bleach-Fix Regenerator,

Ektaprint 2, 3, 3000 and 3HC

Kodak Ektaprint Bleach-Fix Regenerator S

Kodak Ektaprint Bleach-Fix Defoamer

May Be Purchased For Resale

May Not Be Purchased For Resale

6. KODACHROME FILMS

Color Developing Agents:

Kodak Color Developing Agent, CD-1
Kodak Color Developing Agent, CD-2
Kodak Color Developing Agent, CD-3
Kodak Color Developing Agent, CD-4
Kodak Color Developing Agent, CD-6

Miscellaneous-Kodachrome Films:

Kodak, Color Movie Film Lubricant
Kodak Hardening Agent, HA-2
Kodak Potassium Iodide

Rem Jet Removal Solution:

Kodak Anti-Calcium, No. 4
Sodium Carbonate, Anhydrous
Sodium Sulfate, Anhydrous

First Developer:

Kodak Anti-Calcium, No. 4
Sodium Sulfite, Anhydrous
Sodium Carbonate, Anhydrous
Hydroquinone

Cyan Developer:

Kodak Anti-Calcium, No. 4
Sodium Sulfite, Anhydrous
Kodak Anti-Fog, No. 2
Sodium Hydroxide
Kodak Balancing Developing Agent, BD-8

Yellow Developer:

Kodak Anti-Calcium, No. 4
Sodium Sulfite, Anhydrous
Kodak Anti-Fog, No. 2
Sodium Sulfate, Anhydrous
Sodium Hydroxide
Kodak Balancing Developing Agent, BD-8

May Be Purchased For Resale

May Not Be Purchased For

6. KODACHROME FILMS (Contd.)

Magenta Developer:

Kodak Anti-Calcium, No. 4
Sodium Sulfite, Anhydrous
Sodium Sulfate, Anhydrous
Sodium Hydroxide
Kodak Silver Halide Solvent, HS-104
Kodak Reversal Agent, RA-1
Sodium Carbonate, Anhydrous
Kodak Citrazinic Acid

Bleach:

Sodium Ferrocyanide 10H₂O
Potassium Persulfate

PHOTOGRAPHERS, ETC. (Contd.)

420.0595 **Photographic Chemicals.** The following chemicals are manufacturing aids and may not be purchased for resale by photographic studios or photo finishers:

Kodak Ektacolor Bleach-Fax and Replenisher for Process RA-4 or RA-4NP
Flexicolor Bleach II, Regenerator
Flexicolor Bleach II, NR Replenisher
Flexicolor Developer, Starter LORR
Dektomatic Developer, Replenisher Concentrate

The following products are incorporated into the final product to be sold and may be purchased for resale by photographic studios and photofinishers:

Kodak Ektacolor Stabilizer and Replenisher for Process RA-4 or RA-4NP
Dektomatic Fix and Replenisher
Dektomatic Fix, Developer Replenisher
Kodak Flexicolor ML Stabilizer and Replenisher
Flexicolor Developer, Replenisher LORR 9/25/89.

420.0600 **Retouching.** Photographers are ordinarily consumers of negatives and retailers of positives. Therefore, negative retouching sold to commercial photographers is taxable fabrication labor. However, retouching the positive or print when purchased by the photographer for resale is not subject to tax. 10/16/64.

420.0620 **Retouching Negatives.** A portrait photographer is the consumer of negatives from which he makes photographic portraits. Retouching of the negatives constitutes processing under Section 6006(b).

Accordingly the charges made to the portrait photographer for retouching the negatives are subject to sales tax. 11/21/67.

420.0640 **Retouching Negatives.** A person in the business of retouching negatives for a portrait photographer is engaged in taxable processing of tangible personal property furnished by a consumer, under Section 6006(b) where the photographer does not sell the negative to his customer. Where the photographer makes a separate charge to his customer for such retouched negative, he is regarded as selling the negative, and the retouching is regarded as nontaxable fabrication of property for resale. 11/3/67.

420.0650 **Retouching Prints.** If a photographer retouches a new photograph for a customer, the charge is includable in the photographer's taxable gross receipts, because the charge is for labor to prepare the photograph for sale. If that processing is done on a customer's new photograph, the charge also is subject to sales tax as part of the labor to complete the finished photograph.

If retouching is done on the customer's photograph to restore the photograph and bring it back to its original condition, the charge is not subject to tax. 2/17/95.

PHOTOGRAPHERS, ETC. (Contd.)

420.0660 **“Reverse Processing.”** The developing of film by the reverse processing method, i.e., develop the film to a negative and reverse it into a positive, is regarded as fabrication of customer-furnished property, and the entire charge is taxable. 6/29/55.

(c) X-RAY FILMS AND RADIOGRAPHS.

420.0675 **Charges for X-Rays by Veterinarians.** Veterinarians retain title and possession of x-ray films which they produce for the diagnosis of the animals they treat. Therefore, a veterinarian is considered a consumer of the materials and supplies he uses to produce diagnostic x-ray films for his own use, provided the veterinarian does not transfer title or possession of the x-ray film to his customers. Also, a sale does not occur when there is a temporary transfer of possession of x-ray films between veterinarians because, by law, a veterinarian must transfer possession of x-ray films to another veterinarian making a written request for such films with the permission of the animal's owner. The transferred film must be returned to the vendor who originally treated the animal within a reasonable time.

A taxable sale or lease occurs when a producer of x-ray films (e.g., an x-ray lab) furnishes x-ray films of animals, for a consideration, to veterinarians who order them. The producer is a retailer of tangible personal property. Such a producer of x-rays is considered a retailer of tangible personal property even though it may furnish a diagnosis or report to the veterinarian along with the x-ray film, may retain title to the x-ray, and permanently store the film after utilization by the veterinarian. 2/8/84.

420.0680 **Correction of Manufacturing Defects.** A taxpayer operates an inspection and certification service utilizing, among others, radiographic (x-ray) inspection procedures. The taxpayer also does fabrication and repair. If defects are found in the product, the taxpayer grinds out the defective area and corrects it by a welding process. Upon completion of the process, the taxpayer bills the customer for the inspection, for the corrections made (if any were needed), and for the number of x-ray films exposed and examined in the process. The films may be delivered to the customer along with the inspected products and the certification.

Although the films are correctly purchased tax-paid by the taxpayer, their subsequent retail sale by the taxpayer after use in the inspection process is subject to tax in those cases where title or possession passes to the customer without credit for the tax paid on the purchase. The charge for correcting defects is taxable if the item is new as the correction would be a step in the process of fabricating the item into a finished, usable product. If the item was used, the correction of defect would be repair labor, not subject to tax. 6/19/80.

420.0686 **Inspection Services.** A firm engaged in the business of providing the following services is a consumer of x-ray film.

- (1) Testing and inspecting the customer's products.
- (2) X-raying the products.

PHOTOGRAPHERS, ETC. (Contd.)

- (3) Examining the x-ray film for possible defects in the product.
- (4) Preparing a report to its customer based on the results of the tests and the examination of the x-rays.

The primary purpose for purchasing the x-ray film is for use in the inspection service. Thus, the firm may not purchase the film for resale. Whether the subsequent sale of the x-ray film to the customer results in a taxable sale depends on further facts. If the customer purchases the x-ray film to make its own inspection, the sale is a retail sale. If the customer purchases the x-ray film merely to sell to its customer with no intervening use, the sale is nontaxable. 6/24/91.

420.0689 Microfiche Copies of X-Ray Film. Microfiche copies of X-Ray film do not qualify as an X-Ray film or photograph pursuant to section 6020. Persons who sell such copies are the retailers and tax applies to the total charge. 6/18/88.

420.0690 Photographs and X-Rays Used for Medical Diagnosis. Effective October 1, 1982, Section 6020 of the Revenue and Taxation Code provides that tax applies to the sale of materials and supplies used in the production of x-rays and photographs which are used for medical or dental diagnosis of human beings and are not used for purely cosmetic purposes. Tax does not apply to the sale by the producers of x-rays or photographs to their customers, since the producer is deemed to be a consumer and not a retailer. The sale of x-rays used for the purpose of diagnosis of conditions of animals is no longer within Section 6020 and is, therefore, subject to tax.

Accordingly, on their billings to customers, producers of x-rays or photographs should state the price for taxable x-rays or photographs separately from the price for nontaxable x-rays or photographs. If, however, the producer makes a lump sum charge for taxable and nontaxable x-rays or photographs, the Board shall make an allocation of the charges based on whatever information is available. 7/18/83.

420.0694 Producing Images on Paper. A contract calls for the use of ultrasound and/or computer assisted topography equipment for producing imaging paper which becomes the report itself, along with documentation upon how the imaging was produced. The invoicing separately states travel, film, equipment rental, pass through costs of equipment rented locally, technician labor, and systems operator labor.

Based on the fact that no professional interpretation or conclusions are provided and the imaging on paper becomes the report itself, which comes along with documentation of how the imaging was produced, the true object of the contract is to provide tangible personal property. Therefore, the total charge made is subject to tax with no deduction for the items separately stated on the invoice. 1/11/94.

420.0697 Radioscopy and Shooting Pictures of Food Products. A contract calls for the inspection of food products possibly contaminated by foreign material. The process involves exposing the food products to radioscopy and "shooting pictures" of items that appear contaminated. The contract calls for a

PHOTOGRAPHERS, ETC. (Contd.)

report to be issued. If no contaminated food is found, only a report is issued. If contaminated food is found, the film becomes part of the report. Invoicing reflects technical labor, equipment rental, travel expenses, and an unspecified materials fee.

In this case the true object of the contract is for the performance of a contaminated food report which is a service. The film is considered to be merely incidental to providing nontaxable services and there being no additional charge for providing the film, charges for the performance of such services would not be taxable. 1/11/94.

420.0700 X-Ray Film. X-ray film purchased for resale, exposed and identified with specific footage of welded tubing used in missile and aircraft construction is not subject to use tax when sold with the tubing for resale, pursuant to specific orders from the customer. 10/13/64.

420.0720 X-Ray Films, Where Not Purchased for Diagnosis. Section 6020 states that "Producers of X-ray films for the purpose of diagnosis are the consumers of materials and supplies used in the production thereof" refers to X-ray films produced for the diagnosis of conditions of the human body and does not relate to X-ray films produced for the inspection of metals and other similar purposes.

Accordingly, when X-ray laboratories furnish radiographs for such purposes as inspection of metals, the laboratory is the retailer and liable for payment of sales tax measured by the retail selling price of the radiographs. If a laboratory enters into a contract for the furnishing of an X-ray inspection service, there being no transfer of title to radiographs involved, charges for the performance of such an inspection service would not be taxable. 10/22/51.

420.0740 X-ray Pictures sold at stipulated price to shipyards are taxable as are sales of pictures taken by exposure to gamma rays. 7/27/50.

420.0820 X-Ray Services—Structural Bridge. A taxpayer provides equipment, materials, and labor to perform x-rays on structural bridge components on-site. The contract calls for the transfer of film and documentation upon completion. Professional expertise is called for in the use of the equipment and the labor to shoot and develop the radiographs. There is no professional interpretation of the radiographs or film.

The true object of this contract was for the providing of tangible personal property in the form of x-ray film. Since the documentation, in the form of procedures manual, survey of radiation level and logs showing how each x-ray was shot, was part of the sale and was incidental to providing property, the total gross receipts are subject to sales tax. 1/11/94.

420.0850 X-Rays. When a manufacturer chooses to x-ray its product to detect defects, the manufacturer is the consumer of the film even though the x-ray is subsequently sold with the product. When the x-ray is taken only upon the buyer's request, the film may be purchased for resale even though it may incidentally be viewed to detect defects. 4/22/87; 7/10/96.

PHOTOGRAPHERS, ETC. (Contd.)

420.1200 X-Rays of Manufactured Property. Where a contract for manufactured property requires that the individual parts be x-rayed and that the radiographs be furnished to the customer along with the manufactured item as proof that the item meets specifications, the manufacturer may purchase x-ray film for resale. The examination of the radiograph by the manufacturer prior to shipment is not a taxable use by the manufacturer because the primary purpose of purchasing the film is to resell it to the customer. If either the radiograph or the part is defective, the film will be regarded as part of ordinary, unintended production losses in the same manner as the defective item. 10/5/86.

PLANTS

See Seeds, Plants and Fertilizers.

POLISHERS

See Manufacturers of Personal Property; Repainting and Refinishing.

POLITICAL SUBDIVISIONS

See State and Political Subdivisions.

POSTERS

See Printing and Related Arts.

PREMIUMS

See Gifts, Marketing Aids, Premiums and Prizes.

425.0000 PRESCRIPTION MEDICINES—Regulation 1591

(a) GENERALLY

425.0004 Acupuncturist. SB 1558 (1980), Chapter 1313, provides that an acupuncturist's certificate authorizes the holder thereof to “. . . prescribe the use of . . . nutrition, including the incorporation of drugless substances and herbs as dietary supplement to promote health.” The meaning of “prescribe” under the above law does not fall within the context of the word “prescribe” pursuant to section 4036 of the Business and Professions Code. This section provides that, “no person other than a physician, dentist, podiatrist, or veterinarian, . . . shall prescribe or write a prescription.” Therefore, the provisions of SB 1558 (1980) will not change the application of the sales tax to sales of herbs and drugless substances by acupuncturists.

If an acupuncturist is a licensed physician or other person specified in section 4036 of the Business and Professions Code, and prescribes drugless substances and herbs which he furnishes to his patient for treatment, or which are dispensed on prescription filled by a registered pharmacist in accordance with the law, such acupuncturist is not required to hold a seller's permit and the sales to the patient are exempt from tax. 12/12/80; 5/14/96.

425.0005 Acupuncturists. Sales of herbal medicines by an acupuncturist are subject to tax unless the acupuncturist is also a person authorized to prescribe medicines under the Business and Professions Code. 8/18/92.

PRESCRIPTION MEDICINES (Contd.)

425.0007 Board Staff and Review of Prescription Records. The Business and Professions Code section 4331 provides in part “all prescriptions filled shall be kept on file and open for inspection by duly constituted authorities for a period of at least three years . . . ” (underscoring added).

Since Government Code section 15618 authorizes the Board through its staff to examine records of persons having knowledge of the affairs of those required to report to it, the Board may review prescription records for the purpose of determining compliance with the Sales and Use Tax Laws. 9/23/85.

425.0008 Catheter Supplies. Sales tax applies to sales of coronary guide wires, coronary guiding catheters, inflation devices, syringes, homeostatic valves, guide wire introducers, sheath introducer systems, torquing devices, and other related supplies and accessories. 1/18/96.

425.0010 Catheters. The determination of whether or not the sale of a particular medical item is subject to tax is based on the use of the item. Accordingly, if a catheter is used in a manner coming within Regulation 1591.1(b)(4), the sale of the catheter is not subject to tax. 10/18/95. (Am. 2003-1).

425.0010.001 Catheters. Pacing, ventricular and cardiac catheters are exempt from tax if they are intended to remain in the body for a period of six months or longer. These include:

Goetz Pacing Catheter	Ducor Catheter Fem. L. Coronary
Ducor Catheter Fem. Ventricular	Goetz Pacing Electrodes
Zucker Pacing Catheter	

Catheters used as pressure monitors, diagnostic tools, or to inject substances into the human body are taxable. These include:

Gensini Teflon Catheter	Introducer
Gensini Dacron Sones Catheter	Gerlin Electrode Catheter
Arterial Catheter	Sones Catheter
Arterio-Venous Cath Introducer Set	Venous Retura Catheter
Desile-Hoffman Percutaneous Cath	Judkin Coronary Catheter. 8/14/78.

425.0011 Catheters—Nonexempt. Catheters used for diagnostic purposes, for administration of fluids, drugs and blood products, for patient monitoring, and for pain management are not within the definition of “medicine” under Regulation 1591.1(b)(4), unless they are permanently implanted in the patient’s body. 4/13/94. (Am. 2003-2).

425.0012 Chinese Medicinal Herbs. Products marketed as “Chinese medicinal herbs” through specialty stores do not qualify as either food products or medicines. They are not food products because Regulation 1602 specifically excludes medicines from the definition of food products, and they are not eligible for exemption as medicines because the vendor is not a registered pharmacist nor is the product dispensed by a person or in a manner required by Regulation 1591. 12/2/83.

PRESCRIPTION MEDICINES (Contd.)

425.0014 Chiropractor—Cervical Collar. For the purposes of section 6018.4 of the Revenue and Taxation Code, the term “orthotic devices” has the same meaning as it does in section 6369(c)(3), that is, a device fully worn on the body of the patient for the correction of the body structure.

Thus, furnishing of a neck brace (cervical collar) by a chiropractor in connection with the furnishing of services does not result in a sale. Rather the chiropractor is the consumer of the neck brace and must pay tax or tax reimbursement on his/her acquisition. Over the counter sales by chiropractors (i.e., no professional services provided) are sales and subject to tax. 11/3/94.

425.0018 Chiropractor Selling Nutritional Supplements. A retailer of nutritional supplements sells these supplements to chiropractors, some of whom sell these products as part of the treatment of patients. The charge, including any markups, is separately stated on the patient bills. The products may also be sold to the general public. The retailer asks whether the fact that the chiropractor separately charges for the nutritional supplement mean that all sales to him/her are excluded from tax as being for resale.

Since chiropractors are not “physicians or surgeons” sales of these products are not exempted from sales tax as prescription medicines. When dispensing the supplements in the course of rendering professional services, the chiropractor is the consumer of the supplements. When selling supplements on a general basis without rendering professional services to the purchaser, the chiropractor is treated as a retailer of those products. A chiropractor who sells nutritional supplements at retail must have a seller’s permit and may purchase the products free of tax by issuing a resale certificate at the time of purchase. If a chiropractor issues a resale certificate and it is accepted in good faith, the chiropractor will have to pay use tax on the supplements consumed in providing services and sales tax on the supplements sold at retail. 9/10/90.

425.0020 Chiropractor-Naturopath is not a “physician and surgeon” as that term is used in Section 6369. 10/6/64.

425.0021 Claimed Violation of Taxpayer’s Equal Protection Rights. A claim for refund was filed because the taxpayer claimed a violation of its equal protection rights. The California Department of Health Services (DHS) maintains that sales of creams and washes for incontinent persons are medical items and, thus, does not reimburse medical supply houses for sales tax that they pay on their sales of such items. The Board interprets section 6369 to mean that sales of these items by supply houses are taxable.

The issue in this claim concerns an apparent conflict of opinions issued by two state agencies. As a state agency, the State Board of Equalization has no power to declare a state law unconstitutional. (Cal. Const. Art. III, section 3.5) Therefore, the Board must enforce the statute as written and deny the claim. 1/10/96.

425.0022 Cleaning of Dialysis Equipment. Machines used to purify water for dialysis machines or to clean artificial kidneys after they have been used on a hemodialysis machine are not necessary and integral to the operation of the

PRESCRIPTION MEDICINES (Contd.)

dialysis machine nor are they “related supplies.” They are not exempt “medicines” under Regulation 1591(j). 8/29/94.

425.0022.700 Cold Compression Therapy. These units apply controlled compression to minimize hemarthrosis (blood filling joint cavities) and swelling along with cold to minimize pain. They do not qualify as “medicines.” 10/15/96.

425.0022.800 Colon Irrigation Devices. A colon irrigation device is a closed system that pulses warm water into the colon through a cuffed speculum, hydrating stool and allowing it to evacuate by gravity into a containment bag. The gently pulsing water stimulates the natural peristaltic action of the colon. Inflow and outflow is controlled and adapted to each patient and application. Inflow is under low pressure, 3 psi. Outflow is to gravity only. At no time is material suctioned out of the patient.

Items like the colon irrigation device, which inject liquid to stimulate the body’s natural elimination system, apply treatment to the patient. They are neither implanted in nor worn on the body nor are they made necessary as a result of a surgical procedure by which an artificial opening is created to eliminate natural waste. For these reasons, they do not qualify as medicines under Regulation 1591. As a result, they are excluded from the term “medicines” under subdivision (c)(2). Sales of colon irrigation devices are subject to tax. 10/24/02. (2003-3).

425.0023 Confidentiality—Prescription Records. The prescription medicine exemption contained in section 6369 of the Sales and Use Tax Law for sales by pharmacies is conditioned on certain requirements, which are that the prescribed item be a medicine prescribed for the treatment of a human being by a person authorized to prescribe the medicine and dispensed by a registered pharmacist in accordance with law. Section 6091 establishes a presumption that all gross receipts are subject to tax until the contrary is established. Under this section, it is up to the pharmacist to establish that the sales for which he claims exemption have met all of the requirements. A pharmacist who withholds information contained on prescriptions he has filled has not established his right to the exemption and the Board may estimate the value of the merchandise sold from whatever information it may have in its possession or which may come into its possession, including the “street value” of drugs not accounted for by the sales records. The authority of the Board or its representatives to inspect the records of a pharmacy is not limited by the sections of the Business and Professions Code dealing with the inspection rights of other state agencies. 12/20/85.

425.0025 Dental Supplies, Devices and Appliances. The gross receipts received from the sale of dental items, dispensed by prescription bearing a legend such as “Caution: U.S. Federal law restricts this device to sale by or on the order of a dentist” are not automatically exempt from sales tax. In order to be exempt, the item must satisfy the definition of a “medicine” and it must be sold as specified by the statute or regulation. 4/26/91.

425.0025.500 Device not Permanently Attached. Subdivision (b)(2) of Regulation 1591 explains that the exemption it covers requires the items to be

PRESCRIPTION MEDICINES (Contd.)

“permanently attached.” There is no such requirement to qualify for exemption under Regulation 1591(j) [now Regulation 1591.1(b)(2)], “Mammary Prostheses and Ostomy Appliances and Supplies.” 3/10/94. (Am. 2002-3).

(Note: Subdivision (j) of Regulation 1591 was deleted effective March 10, 2000 and moved to new Regulation 1591.1(b)(2), effective the same date.)

425.0026 Dialysis Machine Accessories. Kidney dialysis machines and necessary supplies are exempt. However, accessories such as a computer and software used as data management system and a dialyzer reprocessing system are taxable. They are not an integral part of the dialysis machine. The machine can operate without either, and neither are substances or preparations intended for internal or external application to the body of the patient. 3/24/86.

425.0027 Doctor’s Professional Corporation. Sales by a doctor’s professional corporation are, for the purposes of Regulation 1591, regarded as sales by the doctor. 7/18/95.

425.0028 Drugs and Placebos Used in Clinical Trial. A drug company purchases “raw materials” to specifically develop a new drug. The “raw materials” are drugs each of which could be purchased as a prescription drug in its own right. The “raw materials” are purchased in bulk quantities and shipped to an independent laboratory located out of state. Syringes are purchased from another firm and also sent to the lab. The lab combines two of the “raw materials” in one syringe and a third “raw material” is placed in a separate syringe. The lab then returns the drugs and syringes to the drug company in California. The company then packages the drugs and syringes into clinical trial kits and distributes the kits at no charge to various clinical sites. The final product is to be administered to the patient by a doctor who is running a clinical trial. The company pays the doctors to participate in this human clinical trial stage of the FDA’s drug approval process.

As part of the clinical trial phase, the company uses placebo injections which contain the same ingredients as the other injections except one of the three ingredients is inactive. These clinical trials are double-blind.

First, the drug company’s purchases of the “raw materials” and the placebos are subject to sales or use tax. A placebo is an inactive substance which is not sold or used for treatment of the patient but rather to test effectiveness of another drug in treating a human being. These placebos, therefore, do not qualify as “medicines” under Regulation 1591(b)(1). The “raw materials” themselves are also not purchased for the treatment of a human being, but for incorporation into another product, and it is that product which is used to treat human beings. The raw materials cannot be purchased for resale at this time since they are not being resold but rather are being consumed by the company through the agency of the physician.

Second, under these facts, the combination of drugs are not “medicines” under Regulation 1591(b)(1). They are still being developed and tested for effectiveness as part of the FDA approval process. Thus, they cannot be said at the stage to be

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“commonly recognized as [substances or preparations] intended for the [diagnosis, treatment, etc., of disease].”

Third, the lab’s “services” are part of the manufacturing process of materials furnished by the consumer (the company) and subject to sales or use tax. (Regulation 1526(a).) Since the lab operates out of state, the drug company is subject to use tax on the charges made by the lab for the lab services for those drugs consumed in California.

This conclusion is distinguishable from annotation 425.0050. In annotation 425.0050, the drugs at issue were “medicines” at the time of purchase by the drug company and withdrawn from an ex-tax resale inventory. Here, the raw materials are being purchased specifically to develop a new drug. 6/13/94. (Am. 2003-2).

(Note: Statutory change effective 1/1/95 which added paragraph (a)(6) to section 6369 is not reflected in this opinion.)

425.0030 Durable Medical Equipment (DME) Company. A question was posed regarding the charging of sales tax by a durable medical equipment (DME) company which is under contract to nursing homes, long-term care facilities, and intermediate care institutions. Items sold to these institutions are listed as “medicines” under Regulation 1591.

As long as these facilities qualify as “health facilities” under Regulation 1591(g), DME may sell to them free of tax by accepting either a resale (if some items are resold) or exemption certificate (Regulation 1668). Even though a facility does not qualify as a “health facility” the exemption may still be available if the purchaser complies with the other terms of Regulation 1591(a) e.g., furnished by a physician for treatment of a patient. 10/22/91.

425.0038 Ear Protection. Products such as ear putty or medco-mold which are used to temporarily seal ears to protect the middle ear from the entry of foreign material after eardrum surgery do not qualify as exempt prescription medicines. 8/23/85; 5/29/96.

425.0040 Esophageal Dilators. Esophageal dilators are not permanently implanted in the body of the patient and are in the nature of devices, appliances, etc. Tax applies to their retail sale. 10/6/93.

425.0041 Exercise Tubes and Cervical & Lumbar Pillows. Even though cervical and lumbar pillows are corrective devices, they are not designed to be worn nor are they fully worn on the person of the user and, as such, are not orthotic devices which are classified as “medicines.” The same rationale applies to the exercise tubes. Accordingly, tax applies to the sale of such items. 7/22/88.

425.0045 Experimental Medicines. A taxpayer is in the business of developing new medicines. Initially, the medicines are used in controlled studies to investigate their safety and efficiency. The experimental medicines are administered by licensed physicians. No charge is made to the patients. While the experimental medicines qualify as “medicines,” the raw materials are not resold because the medicines are not resold. The raw materials are consumed by the

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taxpayer in the process of developing new medicines. Accordingly, tax applies to the raw materials. 4/2/94. (Am. 2002-2).

(Note: Statutory change effective 1/1/95 which added paragraph (a)(6) to section 6369 is not reflected in this opinion.)

425.0050 Experimental Drug. An experimental drug dispensed by doctors who are being paid by a drug company to participate in the study of an experimental drug is “prescribed for the treatment of a human being . . .” and “furnished by a licensed physician and surgeon . . . to his own patient for treatment of the patient.” When the experimental drug is sold by a manufacturer to a drug company which pays doctors to participate in the experiment, an exempt sale of medicine occurs since the sale is in the manner prescribed in Regulation 1591(a)(1) and (2) and tax will not apply to such sales. The use of the drug made by the doctors is attributable to the drug company, for whom the doctors act as agents. 9/8/78.

425.0051 Federal Food and Drug Administration Classifications. The fact that the Food and Drug Administration classifies a product as a medicine has no bearing on the classification of the product as a medicine under the California Sales and Use Tax Law. The appropriate classification of an item as a “medicine” for sales tax purposes is based on the interpretation of “medicine” as contained in section 6369. 5/1/95.

425.0052.800 Foley Catheters and Arm Supports. Some hospitals elect to use products which generally may not qualify as a “medicine” in an application which is exempt by statute. For example:

(1) Foley catheters. Although customarily these catheters are attached to anatomical opening in the human body to drain waste (taxable), they are sometimes used for post-operative insertion through an artificial opening to drain waste (exempt).

(2) Arm supports. These are sometimes used as orthopedic supports in the nature of splints (exempt).

It was asked whether the hospitals should buy these items under an exemption certificate and accrue tax based on a ratio representing the taxable use of these products.

It would be proper for a hospital to use an exemption certificate for the purchase of items which will be exempt from tax under section 6369. To the extent any items purchased under an exemption certificate are used or sold in a manner so as to make them subject to tax, the hospital should pay tax on such items. 9/29/80.

425.0053 Food Products as Prescription Medicines. Products such as granular diet products which are not defined as “food products” under Regulation 1602(a) may be “medicines” under Regulation 1591(b)(1) if furnished by physicians to their patients during the course of treatment. Under these circumstances, the physician’s purchases and sales of these products would be exempt from tax under Regulation 1591(a). 2/28/91.

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425.0054 **Intravenous Devices.** In general, sales of intravenous tubing and poles, blood glucose monitors and test strips, needles, syringes and catheters are regarded as taxable sales of devices and not exempt sales of medicines. Sales of infusion pumps that are programmable and fully worn on or implanted in the human body and which automatically cause the infusion of measured quantities of medicine into the body of the wearer of the device are exempt sales of medicines. Pumps that gravity feed or which are not fully worn on or implanted in the body of the patient do not qualify. 11/23/94.

425.0055 **Medicare Part A, Medicare Part B and Medi-Cal.** Under Medicare A, health care providers must enter into a contract with the federal government to provide services under that program. Sales of tangible personal property for which payment is made under Medicare A are sales to the United States and are exempt from tax. Sales for which payment is made under Medicare B, Medi-Cal, or private health insurance companies are subject to tax unless exempt pursuant to Regulation 1591. 7/11/91.

425.0060 **Homes for the Aged.** Homes for the aged maintaining licensed nursing beds and a medical staff are hospitals for purposes of the medicine exemption. 12/2/63.

425.0080 **Hospital.** There is no distinction between hospitals of less than 100 beds not having a full-time pharmacist and other hospitals for purpose of exemption. 11/1/63.

425.0100 **Hospitals Aboard Ocean Liners.** Ocean carriers which comply with federal requirements that a licensed physician and surgeon be carried on each voyage and also maintain hospital beds, equipment and registered nurses for passengers and crew can claim tax exemption for any medicines dispensed from such facilities aboard ship because these ships qualify as hospitals under Section 6369. 5/11/64.

425.0120 **Hospitals—Exemption Certificates.** A suggested form of exemption certificate to be furnished by hospitals to suppliers of medical gases is as follows:

TAX EXEMPTION CERTIFICATE (HOSPITALS)

I hereby certify that _____
(Name of hospital)

qualifies as a hospital under provisions of Section 6369 of the California Revenue and Taxation Code.

I further certify that all medicines (as defined in the above cited Section of the law) purchased from _____
(Name of vendor)

will be either sold or used for the treatment of a human being as provided by Regulation 1591 of the California State Board of Equalization. 4/10/64.

425.0130 **Hospital's Purchases of Exempt Items.** Wheelchairs, crutches, canes, quad canes and walkers ordered by a hospital on behalf of a specific patient can be considered to be purchased by an individual for his own use at the

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direction of a physician and are, therefore, exempt from tax under Revenue and Taxation Code Section 6369.2. The fact payment for the equipment is made by a hospital plan insurance or Medicare does not cause the exemption to be lost. 11/26/79.

425.0131 **Hot Tubs.** A hot tub or similar hydrotherapy device for the treatment of arthritis does not qualify as “medicine” even though recommended by a doctor. 1/31/97.

425.0132 **Impregnated Dressings.** If a dressing has been impregnated with a medicine, the dressing is treated as a medicine. Petroleum jelly is a medicine. Thus, a dressing impregnated with petroleum jelly would qualify as a medicine if sold under the conditions prescribed by the statutes. 7/11/96.

425.0135 **Insulin and Insulin Syringes.** Insulin and insulin syringes sold by the Diabetes Society to a patient are subject to the tax if the society is not a registered pharmacy. (Regulation 1591(h)) [now 1591.1 (b)(5)]. 1/24/92. (Am. 2001-3).

(Note: Regulation 1591 was amended effective March 10, 2000. Reader should note changes to the subdivisions indicated above.)

425.0140 **House Physicians.** Sales of medicines to persons who employ full or part-time physicians who use the medicines in the treatment of other employees are considered exempt sales under Section 6369. 11/20/64.

425.0142 **Items Provided to Patients by HMO.** The following covers the application of tax to items furnished to patients by a HMO.

(1) Prescription Medicines

The patient is not required to make a co-payment or a fee for prescribed medicines. The patient takes the prescription to the HMO owned pharmacy which will dispense the medicine or reimburse for said purchases from another pharmacy.

The HMO owned pharmacy is considered the retailer of the medicines, containers, and labels. It may buy those items ex-tax for resale. The subsequent sales of medicines to patients will be exempt if they qualify under Regulation 1591 (a). Also, the subsequent sales of the containers and labels containing medicines will be exempt if they qualify under Regulation 1589 (b). If the HMO does not own the pharmacy, the pharmacy is the retailer with the same results. It matters not if the patient must make a co-payment.

(2) Durable Medical Equipment (DME)

The HMO provides DME (wheelchairs, crutches, etc.) to members when ordered by physicians. The HMO retains title to the DME products even though the products may never be returned. The HMO does not charge the patient for the DME.

Since the HMO is not the patient and is providing the DME free of charge, the HMO is the consumer of the items. Tax applies to the sale of the DME to the HMO.

PRESCRIPTION MEDICINES (Contd.)**(3) Cervical Diaphragms**

Cervical diaphragms are not considered a medicine, but rather a device. (Regulation 1591 (c)(2).) 1/8/93.

425.0142.010 Items Provided to Patients by HMO. An HMO provides durable medical equipment (DME) such as wheelchairs, oxygen dispensing equipment, etc., to members at no charge when ordered by physicians. The HMO retains title to the DME products and the member must return it or pay the HMO the fair market price when it is no longer prescribed.

Since the HMO is not the patient and is providing the DME free of charge, the HMO is the consumer of the items. Tax applies to the sale of the DME to the HMO.

An out-patient of the HMO is not required to make a co-payment or a fee for prescribed medicines. The patient takes the prescription to the HMO-owned pharmacy which will dispense the medicine.

Under this plan, the HMO would be the consumer of those items it dispenses that are not billed to the patients. The HMO would owe tax on the purchase price of nonmedicine items including containers for prescription medicines, but not on prescription medicines as provided under Regulation 1591. However, the HMO (pharmacy) would be the retailer of items excluded from the term medicine under Regulation 1591 sold to the patient, even though the patient may be subsequently reimbursed by the HMO. 10/5/95.

425.0143 Items Without Prescription. Items which are purchased without a prescription such as liniment, aspirin and milk of magnesia are not exempt when sold over the counter to purchasers without a doctor's order. The same items are exempt when sold to a health facility and later furnished to patients in that facility pursuant to the order of a physician. This exception does not apply to items which cannot be regarded as medicines. An example of the latter would be a germicidal solution used for sterilizing medical equipment. 3/23/78.

425.0143.600 Kidney Dialysis Supplies. Gloves, face masks, isolation gowns, shoe and hair covers, and other such articles used by technicians during the dialysis process are not "related supplies" within the meaning of Regulation 1591(j). Therefore, sales of such item to dialysis clinics are subject to sales or use tax. Sterile gauze dressings which are used directly on the dialysis patient during and after treatment are one of the items mentioned specifically in Regulation 1591(c)(2) as being excluded from the definition of medicines. Thus, the sales of them to dialysis clinics are taxable. 4/24/96.

425.0144 Laparoscopic Surgery—Products Used. Products used in laparoscopic surgery such as trocars, tubes, lighting, camera devices, surgical instruments, etc., are not "medicines," but rather are "appliances, etc." Sales of these items are taxable. 3/27/91.

425.0146 Management Fees. The company enters into an agreement with various providers to furnish medical equipment and supplies to the provider's customers. Under the agreement, it purports to purchase and sell the property to the provider for resale and it receives a "management fee" for its services.

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According to the agreement, the company:

- (1) takes the orders directly from the customers
- (2) delivers the items to the provider's customers
- (3) sets up the equipment
- (4) trains the customers, as necessary, to use the equipment
- (5) handles providers customers' complaints
- (6) bills the provider's customers or insurance company, showing the providers as the sellers or lessors
- (7) receives checks from customers and deposits them in the provider's bank account
- (8) takes necessary collection action, and
- (9) maintains an inventory "as is necessary" to fill orders

Under the agreement, the company appears to be the sole contact point with the customer. It acts as if it is purchasing for its own account rather than on behalf of others. Under these circumstances, it is the retailer of the equipment and supplies. The "management fees" are part of the company's gross receipts. 3/22/93.

425.0147 Manufacturer of Prescription Medicine. A manufacturer of prescription drugs, exempt from the sales and use taxes under Section 6369, requested information regarding the application of tax to certain materials some of which are physically incorporated into the finished product, and some of which are only used and consumed in the process.

The list of materials including serum, yeast extracts, and nutrients are used in the inoculation, cell growth and fermentation processes which form the bulk proteins from which the medicines are formulated. Although only minute traces of these materials are found in the finished product and are not visible, they are purchased for the principal purpose of becoming a part of the finished product and are not subject to tax.

The list of materials including buffers, separating agents, cleaning agents, agents that kill cells or detach the cells from a flask, pH control agents, and anti-foam agents are not for the purpose of incorporation into the final product, but are for use in the manufacturing process and are consumed during that process. These materials are taxable to the manufacturer, as the consumer, when the items are purchased. 2/16/93.

425.0148 Medical Devices. The following applies to the sale of articles which are implanted in the human body:

- (1) Difference between "implanted in the body" and "worn in the person:"

The term "worn in the person" is broader in scope than the term "implanted." The term "implanted" is generally accepted to mean the insertion or the grafting into the intact tissues of the recipient and usually requires some sort of surgical operative procedure. Devices which are "worn in" the body of the user are not necessarily implanted.

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(2) Difference between “natural organ” and “natural part of the body:”

A “natural organ” is generally defined to be a differentiated structure performing some specific physiological function, such as a heart, an eye, or a kidney. The term “natural part” is much broader in scope and includes any part of the body whether or not such part constitutes a differentiated organ.

(3) “Medicine” as defined under 1591(b)(2) and 1591(b)(5):

Sections (b)(2) and (b)(5) of Regulation 1591 provide separate and distinct definitions of the term “medicine,” and apply independently to the sale of the medical devices. Although sections (b)(2) and (b)(5) somewhat overlap in their scope, effective October 1, 1977, a medical device may separately qualify as “medicine” under one or both of these sections. A device which is “temporarily” implanted in the body does not qualify as an exempt medicine under Regulation 1591(b)(2). The same temporary device, however, can qualify as exempt “medicine” under Regulation 1591(b)(5) since this particular subsection does not require the device to be permanently implanted. 10/27/83.

425.0149 Medical Devices. Neither a cervical pillow, placed on a hospital bed to support the patient’s spine, nor a balanced suspension sling which is attached to the hospital bed for the purpose of suspending the patient’s entire leg qualifies as an exempt orthotic device.

Regulation 1591(b)(4) includes within the definition of medicines those orthotic devices designed to be fully worn on the person of the user. Neither of these devices meet this test. 12/9/92.

425.0150 Medicines. “Medicines” within the meaning of Revenue and Taxation Code Section 6369 and Sales and Use Tax Regulation 1591 include not only items applied directly to patients but also items, such as surgical scrubs, applied by hospital personnel to their own bodies to benefit the patient and which constitutes a critical component of the patient’s treatment.

The definition of the term “medicines” was not changed by the court’s decision in *Purdue Frederick v. State Board of Equalization*, 218 Cal.3d 1021 (1990). It merely expanded the Board’s previous interpretation of what constitutes the treatment of a human being within the context of a hospital/health facility. Under the court’s view, an item must still be a “substance or preparation” and there must be a causal connection between its use and the treatment of a human being. 10/17/90.

425.0152 Medicines—Nutritional Products. Ex-tax sales of vitamins, minerals and nutritional products to pharmacists, chiropractors and nutritionists must be supported by a valid resale certificate taken in good faith by the seller. There is no other basis for exemption for sales to these type of buyers.

Ex-tax sales of such products to doctors, surgeons, dentists, and podiatrists may be supported by either a valid resale certificate taken in good faith, or an exemption certificate authorized by Regulation 1667. An exemption certificate would be appropriate only if exempt medicines are sold or if products are

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furnished in conjunction with the treatment of a patient, regardless of whether a separate charge is made for such products. 9/2/92.

425.0160 Medicines Dispensed by Out-of-State Pharmacists. A substance or preparation otherwise qualifying as a medicine may qualify as an exempt prescription medicine under Section 6369 as long as it is prescribed by a person authorized to prescribe the medicine, a licensed physician, dentist or podiatrist, and it is dispensed by a registered pharmacist in accordance with the law of the state where the pharmacist operates.

An example would be a taxpayer, a Washington corporation, selling a prescription drug or medicine to patients in California from its place of business located in the State of Washington. The medicine is prescribed by ophthalmologists or physicians in California to patients. The patient mails an order form with payment to the taxpayer. The order form is processed at the taxpayer's place of business in Washington and the medicine is sent to the patient by United Parcel Service. The processing activity is under the supervision of pharmacists employed by the taxpayer, who are duly licensed by the Washington State Board of Pharmacy to engage in the practice of pharmacy. 5/30/90.

425.0161.400 Medtronic AneuRx Endovascular Prosthesis and Delivery System. The Endovascular Prosthesis is itself permanently implanted in the body to shore up the walls of the blood vessel into which it is inserted and to bypass the aneurysm to relieve the pressure on it. The Endovascular Prosthesis qualifies as a medicine under Regulation 1591(b)(2). The delivery system and the deployment handle are, however, used for inserting the Endovascular Prosthesis into position and do not remain with the body, and they do not fit any statutory exemption. The sales of the delivery system and the deployment handle are thus subject to tax. If all three items are sold together as a kit, a segregation is required to ascertain the correct measure of tax. 10/22/96.

425.0161.5 Miscellaneous Medical Supplies. Items such as egg crate mattresses, egg crate chair pads, ortho pillows, ortho heelbos, and sheepskins are not included in the definition of medicines under Section 6369. 10/5/90.

425.0161.775 Nonexempt Devices. The following items are not regarded as exempt "medicines" because they are not designed to be worn on the person of the user or are items used to conduct tests:

Air Purifiers	Hemocult Slides
Traction Devices	Aspirator
Alternating Pressure Pad and Pump	Humidifiers
Glucose Test Systems	Blood Glucose Monitor
Apnea Heart Monitor	Nebulizers
Glucose Test Strips	Ultrasound Devices
Paraffin Baths	Fetal Monitors
Air Compressor	Pulse Oximeter
Percussor	Exercise Equipment
Continuous Passive Motion Devices	Tent Mist. 10/13/94.

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425.0161.885 **Noninvasive Temporary Pacemaker.** The noninvasive temporary pacemaker (NTP) is a self-contained cardiac pacing device weighing approximately 18 pounds which delivers an electric pulse to the heart via two specially designed electrodes. It is the size of a small portable television and measures 6"Hx12"Wx15"D. In addition to serving as a pacemaker, it also is a portable ECG machine and contains a recorder for monitoring cardiac response. The NTP is not fully worn on the body of the user but is attached by means of the electrodes. Therefore, the NTP does not qualify as an exempt prosthetic device under Regulation 1591(b)(5). If any part of the device is not worn on the person, it will not qualify as an exempt prosthetic device. 12/6/89.

425.0162 **Orthotic Devices.** Certain items which might otherwise be considered as devices, are defined as medicines in Regulation 1591(b)(4). Only those devices designed to be worn on the person of the user as a brace, support, or other correction of the body structure are so classified. Splints may be so classified if they are used in this manner.

Supports, slings and immobilizers for the shoulder, elbow wrist, hip, knee, lower leg, ankle, and arm, and finger splints, knuckle benders and leg splints are all within the definition of medicines. Also included in this category are knee sleeves, patella stabilizers, shoulder cuffs and sleeves, wrist and elbow supports, ankle braces and rehabilitation knee braces.

Not included as exempt orthotic devices are abduction cushions, tension pillows, leg boots, post-op shoes, rocker cast shoes, Reed cast belts, cast boots, heel and elbow protectors, bandages, restraints and padding. 12/9/92.

425.0163 **Permanently Implanted.** An item is considered to be permanently implanted if the intent was that it remain in place for at least six months even if for some reason it had to be removed sooner. 10/6/93.

425.0163.100 **Pharmacist in Another State.** A substance or preparation otherwise qualifying as a medicine may qualify as an exempt prescription medicine under section 6369 as long as it is dispensed by a registered pharmacist in accordance with the law of the state where the pharmacist operates. The sales of ophthalmic medicine through a pharmacist located in another state will be considered exempt sales of prescription medicine under section 6369. 5/30/90.

425.0163.200 **Professional Medical, Dental, or Podiatry Corporations.** Sales of medicines to a professional medical, dental, or podiatry corporation are entitled to the exemption provided in Regulation 1591(a)(4) to the same extent as sales to individual licensed practitioners. 1/30/89.

425.0163.285 **Protonics Device (Knee Brace).** A Protonics Device, which is used in functional active resistance knee rehabilitation, serves as the exercise system to increase muscle strength and neuromuscular function. The device is worn by the user allowing him/her to exercise and perform daily activities. The device is strapped to the patient's leg both above and below the knee. Its joint can be set for different resistance to allow the patient to perform a rehabilitation program and daily activities without pain.

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Hinged knee braces that are fully worn on the body of the patient, such as Protonics Device, qualify as orthotic devices under Regulation 1591(b)(4). Therefore, sales of such devices are exempt from tax when sold pursuant to the written order of a licensed physician or podiatrist [Regulation 1591(I).] Sales of the device pursuant to the order of other persons, such as physical therapists, are subject to tax. 3/3/97.

425.0163.300 Pulse Oximeters. Pulse oximeters are used by hospitals and physicians to measure the amounts of certain gasses in a patient's bloodstream. They are not permanently implanted in the patient. They are appliances, not medicines, and sales of these units are not exempt. 11/30/93.

425.0163.450 Related supplies. The concept of "related supplies" applies only to ostomy devices under section 6369(g). 7/2/97. (M98-3).

425.0163.500 Repairs to Vehicles Used by Physically Handicapped Persons. Regulation 1591(I) exempts "items and materials" used to modify a vehicle. This language is broad enough to cover repairs to equipment used to modify and which become part of the vehicle since repair parts are "items and materials" and, once installed, are "used" to modify the vehicle for transportation of physically handicapped persons. Additionally, any charges to have these parts installed is also excluded from tax under Regulation 1546(a). 10/18/90.

425.0163.600 RIA-Mat Angeotension I I¹²⁵ Kit and Res-O-Mat T3I¹²⁵. These two items are used exclusively in laboratory specimen tests and no part is applied to the human body either internally or externally.

"Medicines" are limited to those substances "intended for use by external or internal application to the human body." Items used in laboratory testing performed "externally to the patients body" do not qualify as items externally applied to the human body within the meaning of Regulation 1591. 1/17/77.

425.0163.825 Sale of Orthotics and Prosthetic Devices. Taxpayer is in the business of providing orthotic and prosthetic devices which are custom fit by the taxpayer's licensed professionals to meet the needs of each individual patient. All sales are made under prescription from the patients' physician. The direct material costs equal or slightly exceed direct labor costs, but the charges are commingled for acceptance by Medicare/Medicaid and private insurance carriers. That the taxpayer's customer may be reimbursed by a medical insurer is not relevant to the determination of whether taxpayer is making an exempt sale. If the sale does qualify for exemption, the taxpayer should obtain from the purchaser an exemption certificate conforming to the requirements of Regulation 1667 and retain it in its own records to support the exemption. If the sale is to Medicare A, it is a sale directly to the United States and is exempt from tax. However, if the patient is reimbursed under Medicare B, that is a sale to the patient, the normal taxation rules apply to determine if the sale was subject to tax. When the sale is not exempt, the taxpayer's entire charge is subject to tax.

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Whether separately stated or not, the taxpayer may not deduct its charges for fitting because the fitting devices are part of the taxable sale of taxpayer's tangible personal property. 4/19/96.

- 425.0164 **Sales to Insured Persons.** A health maintenance organization (HMO) which operates a number of hospitals and clinics forms a subsidiary which purchases equipment and supplies for the hospitals and clinics. The purchasing subsidiary issues resale certificates to suppliers on the basis that it will resell the equipment and supplies to the hospitals and clinics and will report and pay tax at that time.

Suppliers of certain types of equipment, such as wheelchairs, beds, walkers, commodes, and oxygen deal directly with patients rather than the subsidiary. Billings are sent to and are paid by the purchasing subsidiary. These sales are regarded as taking place between the supplier and the patient. The sales are not made to the subsidiary for resale. The subsidiary pays for the equipment on behalf of the insurer. The subsidiary may not issue a resale certificate for such property. 1/26/95.

- 425.0165 **Samples of Medicines.** A taxpayer is in the business of manufacturing and wholesaling prescription drugs and medicines which may not be lawfully dispensed to a patient-consumer without a prescription and are intended only for human use. The company's representatives distribute free samples of the prescription drugs to licensed physicians who dispense these drugs to their patients. Federal law prohibits the company from selling the samples.

The gift of medicine for promotional purpose creates a taxable use of the medicine by the manufacturer in California even in circumstances where the sale of the product under specific conditions would have been exempt. The company owes use tax measured by the cost of the materials which are used to manufacture the sample medicines.

(Note: Subsequent statutory change.) 2/5/91

- 425.0165.350 **Sequential Gradient Pumps.** These units are designed to prevent blood clots from forming in the veins of the lower leg and to treat lymphedems, venous ulcers, and associated complications. They do not qualify as orthotic devices since the pump itself rests on a table beside the patient. Sale of such items are subject to tax. 10/15/96.

- 425.0166 **Skin Care Products.** Skin cleanser/antiseptics, skin bleaching/sun protein products, emollients, and antipruritic lotion are "medicines" and sales of such items are exempt when they are sold by a dermatologist to his/her patient during the course of his/her treatment of the patient. Over-the-counter sales to non-patients are subject to tax. 7/30/92.

- 425.0166.800 **Specimen Collection Kit.** Specimen collection kits are not medicines since they are not for use by external or internal application to the human body (Regulation 1591(b)(1)). California sellers of such items are required to hold a California seller's permit. 7/3/86.

- 425.0167 **Speech Therapy Device.** A speech therapy device providing fluency-enhancing auditory feedback to enable the user to speak fluently does not replace

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or assist in the functioning of any part of the body and is therefore excluded from the definition of medicine. As a result, sales of this device are not exempted by the prescription medicine exemption. 8/23/94.

425.0167.200 Splints and Orthotic Devices. In general, in determining whether an item is a “splint” or an “orthotic device,” a splint is a device designed primarily to immobilize bone pieces in relation to each and which provides no support for the body structure or some support as an incidental effect. On the other hand, an “orthotic device” is designed to provide support to the body structure while the broken bones are healing. Splints do not qualify as “medicines” while orthotic devices do. 10/15/96.

425.0167.500 Sterile Water—Bubble/Silent Humidifier. Sterile water is sold in bulk or in unitized containers for use in a humidifier. Its purpose is to aid the administration of oxygen and other medical gases by means of humidification. The sales would be nontaxable if sold under the conditions prescribed by the statutes regarding prescription medicines. 7/11/96.

425.0168.030 Sutures. Stainless steel clips which are similar to wire staples and which are used for the occlusion and ligation of vessels or body tissue in the course of surgical procedures in the same manner as a suture qualifies as a “medicine.” Accordingly, “Surgicap” and “Clip-A-Matic” qualify as medicines. 7/10/86.

425.0168.040 Tissue and Breast Expanders. Tissue expanders are used to correct soft tissue defects and to excise scar tissue. These tissue expanders come in a variety of shapes and sizes and are intended to be implanted under the skin and sometimes muscle for a period of six to twenty-two weeks. The expander is periodically filled through an internal or remote port as to expand by traction the skin or dermas and associated tissue and blood vessels. After desired expansion, a portion of the skin flap may be removed for covering distant soft tissue defects.

These expanders do not qualify as implants under Regulation 1591 because they are intended to remain in the body only so long as is necessary to produce the skin flaps (less than six months). The tissue expander does not qualify as a prosthetic device pursuant to Regulation 1591 since it does not replace or assist the function of a natural part of the human body. The tissue expander does not stimulate the growth of skin to promote healing of an injury at the site where the expander is placed. Rather, it is in the nature of a manufacturing aid to produce extra skin to replace injured skin elsewhere in the body. This appears to be little different than the production of artificial skin outside the body for the same purpose. The property used to produce such skin would not be a prosthetic device. Thus, the tissue expander does not qualify as a medicine and its sales are subject to tax.

The breast expanders are commonly used for patients who may have had breast cancer and have had some form of moderate or radical mastectomy. The expander is placed under the flap where the faulty tissue used to be, the breast expander is periodically filled to expand the skin about the breast area for a minimum of six weeks, after which the breast expander is removed and replaced with an implant.

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The breast expander accomplishes much the same effect as the tissue expander, the production of tissue. The difference here is that the tissue created by means of the expander ultimately covers an implant. This item does not qualify as medicine under either subdivision (b)(2) or (j) of Regulation 1591; thus, their sales are subject to tax. 4/11/97.

425.0168.145 Urine Drain Bags. Drain bags connected to a catheter to collect urine are “medicines” when they are leg bags used for ambulatory patients. Drain bags used for bedside purposes (bed bags) are not “medicines” since they are not fully worn on the body. 6/11/90.

425.0168.165 Vehicle Modified for Use to Transport Handicapped Persons. A leasing company leases and sells vehicles to a firm (Corporation) engaged in the business of transporting handicapped persons. After the purchase and prior to the lease and sale, the leasing company modified these vehicles to accommodate the needs of the handicapped persons.

Under subdivision (a) of section 6369.4, an exemption from sales and use tax measured by the gross receipts of materials purchased or used to modify a vehicle to accommodate handicapped persons is only available at the time the modifications are performed. If there is a subsequent sale or resale of the vehicle after the modifications have been performed, the exemption is available for the portion of the sales price attributable to the modifications **only** if the purchaser of the vehicle is a disabled person eligible to be issued a license plate or placard for parking privileges accorded to disabled persons pursuant to section 22511.5 of the Vehicle Code. Since the transportation firm, as a corporation entity, cannot be considered a “disabled person who is eligible to be issued a distinguishing plate or placard,” the transfer of the vehicles to the corporation do not qualify for the exemption. 6/24/97.

425.0168.175 Vehicles for Physically Handicapped Persons. The following items are exempt when necessary to enable the vehicle to be used to transport a physically handicapped person.

- (1) Upper torso restraint (similar to shoulder harness)
- (2) An interlock system (a safety mechanism to prevent the transmission from going into drive or reverse while the doors are open and/or ramp is out for loading/unloading)
- (3) An airbag of a unique type to raise or lower vehicle for loading/unloading
- (4) Running boards on the lower side of the vehicle to allow a nonwheelchair-bound physically handicapped person into or out of van
- (5) A bolt cam used to restrain a wheelchair in place inside a van
- (6) Seat belts
- (7) A tire carrier to hold spare tire (in a different place that initially installed by the vehicle manufacturer)
- (8) AC lights used for illuminating the ramp/elevator area
- (9) Hardware for curtains on window for privacy purposes

PRESCRIPTION MEDICINES (Contd.)

- (10) An air compressor for use with medical equipment
- (11) A 12-volt receptacle to supply power to medical equipment
- (12) A 4-point tie-down system to restrain a wheelchair in place inside the van
- (13) A gas tank installed in a new location made necessary by other modifications requiring removal of the original tank
- (14) Allocable portion(s) of the various interior packages, interior materials, and conversions necessary to enable the vehicle to be used to transport physically handicapped persons

The following items are considered not to be necessary to enable a vehicle to be used to transport a physically handicapped person and are not exempt.

- (1) An “upper torso durable pad” (unless it is part of an upper torso restraint)
- (2) Portable ramps (telescopic). These are not used to modify a vehicle, but are separate objects only temporarily placed on the vehicle to be used elsewhere
- (3) Air conditioners which are a luxury in the absence of a physician’s prescription
- (4) A fire extinguisher
- (5) A CB radio
- (6) Leather seat covers
- (7) Windows and their accessories
- (8) Upgrade/fancy interior.
- (9) Engine cover. 8/29/95.

425.0168.260 Wheelchair Baskets and Pouches. Wheelchair accessories such as baskets and pouches come within the definition of “replacement parts” as used in the statute. Therefore, sales of such items under the conditions required by statute are exempt from tax. 5/29/97.

425.0168.280 Wheelchair Repairer. The sale of wheelchair replacement parts sold to an individual for personal use of the individual as directed by a physician is exempt from the sales tax. 2/9/88.

425.0168.300 Worn On or In the Body. Worn on or in the body of a person means the item is either completely below the surface of the body or is attached to the body. “Implanted” and “worn in” are nearly synonymous terms. The difference is one of location and attachment. Implanted generally means inserted or grafted into the tissue versus being placed below the surface of the skin. “Worn on” the person requires some physical attachment and must be fully worn on the person. This attachment need only consist of being taped on the body and may be of a temporary nature as long as part of the item is attached and the entire device is fully worn on the person. If any part of the device is not on the person of the user, it will not qualify. 10/4/84; 7/10/96.

PRESCRIPTION MEDICINES (Contd.)**(b) SPECIFIC ITEMS CLASSIFIED.**

(Note: Section 6369, as amended operative July 1, 1971, includes within the definition of “medicines” the following: “sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers, and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein, or limb and which remain or dissolves in the body.”)

425.0168.450 Abduction and Fracture Pillows. These pillows are used to support, control, restrict motion, provide limited exercising, and/or elevate the leg after hip or knee surgery or in conjunction with traumatic injury to the hips and/or leg. The flyer states that the pillow is for femoral traction. The pillow is strapped to the patient’s leg while the patient is lying on the bed.

Traction devices not fully worn on the body do not constitute orthotic devices. Despite the fact that the pillow is strapped on, rather than the patient simply lying on it, this pillow is no different than others that are placed under the neck or a limb while the patient lies on the bed. Thus, such products are excluded from the definition of medicines under Regulation 1591(c)(2). 7/29/96.

425.0168.5 ADA Brace. The ADA Brace is a brace used for the correction of ankle injuries. As such, it qualifies as an orthotic device under Section 6369 (c)(3), and its sale is not subject to tax when sold or furnished in accordance with Regulation 1591(a). 8/1/89.

425.0169 Agee-Wristjack Kit. The Agee-Wristjack is “designed to biomechanically complement the anatomy of a fracture of the distal radius”, and is fully worn on the patient’s body. The external fixator, bonepins, caps and wrist jacket are all part of the Wristjack. The device and its component parts are an orthotic device. When sold or furnished under conditions set forth in Regulation 1591(a), its sales are exempt from tax. The hex “L” wrench, however, is not part of the system. It is an adjustment tool that is stored on the Wristjack main beam for convenience. Thus, the drill guides, screwdriver, hex wrench and surgeon’s manual are excluded from the definition of “medicines” and their sales are subject to tax. When the kit is sold for a lump-sum price, a segregation of the selling price must be made between taxable and nontaxable items. 11/24/97. (Am. 99-2; Am. 2000-2).

425.0170 Air Compression Pumps and Pneumatic Garments. Air compression pumps used to inflate pneumatic garments and the garments worn for the treatment of lymphedema do not qualify as prosthetic devices, since they are not fully worn on the bodies of the patients. 10/14/93.

425.0172 Air Purifiers. Although a patient purchased an air purifier “at the direction of a physician”, the sale is subject to sales tax. Such medical equipment, even though prescribed or ordered by a physician, is excluded from the definition of medicine. 9/6/89.

425.0173 Alco Wipes. Alco wipes and pads which are pre-impregnated pieces of cotton, gauze, or swab containing medications and/or sterile water are “medicines.”

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Baby Wipes. Baby Wipes when furnished or used by a medical facility in the treatment of a human being qualify as exempt “medicines.”

Athletic Supports. Athletic supports for vasectomy, penile and testicular surgery, and hemorrhoidectomy patients are orthotic devices which qualify as “medicines.” 4/30/92.

425.0175 Ameri-Guide Stairway Lift. The Ameri-Guide Stairway Lift is used by a person to get to the second level of a home and was purchased by prescription. As a result of a stroke, the person is paralyzed on one side and is unable to walk. The stairway lift was prescribed by a doctor due to the person’s limited mobility, which was the purpose of the devices listed for the exemption provided by Section 6369.2. However, the legislature did not enact a generic exemption, but rather exempted certain items. Stairway lifts were not included. Sales of stairway lifts are subject to tax. 1/13/92.

425.0175.125 Amino Acids. Amino Acids sold separately or combined in a mixed formula with vitamins and minerals are included in the definition of the term “medicines” under Regulation 1591. Tax does not apply to sales of amino acids or amino acids combined in a mixed formula with vitamins and minerals when they are sold to a physician who furnishes these products to patients. Even if no claims are made regarding the effectiveness of these products in the treatment of human beings, it would not affect the exemption from tax. 11/27/89.

425.0175.575 Antimicrobial Agents Used by Hospital Personnel. The following antimicrobial cleaning products qualify as medicines when used by hospital/medical staff personnel prior to any patient contact:

- Accent Plus Skin Cleaner
- Accent Plus Perinal Cleanser
- Bacti-Stat
- Cida-Rinse
- Medi-Scrub

The following nonantimicrobial products are not commonly recognized as substances intended for use by external or internal application by the medical staff personnel in the diagnosis, cure, mitigation, treatment, or prevention of disease. Thus, these products do not qualify as medicines when used by medical personnel:

- Derma San
- Derma Soft
- Epi-Fresh
- Germa-Care
- Liquia San T
- Wash

Although the following products are antimicrobial, they are not used for handwashing. These products are used as a lotion and killing germs is incidental to their use. Thus, the sales of these products are taxable when used by medical personnel:

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Accent Plus 1 Skin Lotion
Accent Plus 2 Body Massage
Accent Plus 2 Skin Creame
Accent Plus Total Body Shampoo. 3/12/96.

425.0176 **Antitoxic Serum.** An antitoxic serum is sold to a city owned facility to be stocked for emergency use to neutralize venomous snake bites. The antitoxic serum is a “medicine.” The sale of the medicine to the city (a California political subdivision) is exempt pursuant to section 6369(a)(5). 7/8/87.

425.0178 **Artificial Hearts/Other Externally Connected Devices.** These devices are used in lieu of a transplant heart or other body part until one is made available and include blood tubing, mobile pump and other mechanical contrivances. Such devices are taxable. 10/2/89.

425.0178.5 **Artificial Larynges and Voice Amplifiers.** Artificial larynges are electronic speech aids for persons who have suffered a temporary or permanent loss of voice. They consist of electronic circuitry and batteries contained in a packet which can be put in a pocket or fastened to a belt. A cord connects the packet to a tone generator which is held in the hand. Sound from the packet is delivered directly into the user’s mouth through a plastic tube connected to the tone generator. A voice amplifier is a pocket size battery powered electronic amplifier used to increase the loudness level of weak or esophageal voices.

These items and their related supplies are devices excluded from the definition of medicines pursuant to Section 6369 (b)(2), and their sale is subject to tax. 7/8/86.

425.0178.800 **Athletic Supporter for Surgical Patients.** Athletic supporters prescribed for patients recovering from genital or rectal surgery qualify as orthotic devices worn on the person as a brace support or correction of a body structure under Regulation 1591 and the sales thereof to such patients are exempt. 5/1/86.

425.0179 **Autotransfusion Systems.** Autotransfusion systems do not qualify as “medicines”. These devices are used to reinfuse the patient’s own blood rather than to provide drainage of waste products from the body. 3/6/89.

425.0180 **Baby Powder and Lubricating Jelly.** Baby powder and lubricating jelly when furnished or used by a physician or medical facility in the treatment of a human being are exempt medicines. 6/10/65.

425.0188 **Baby-San.** Baby-San is a liquid castile soap for newborns. When furnished or used by a physician or medical facility in the treatment of a baby, the sales of Baby-San are exempt from tax because the use is on babies as patients. 3/12/96.

425.0200 **Bacteriological Culture Medium.** A prepared bacteriological culture medium is not exempt from the sales tax because it does not qualify as a medicine to be used for external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease. 6/29/66.

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425.0201 **Balectrode.** Balectrode is indicated as being used in “any clinical situation requiring temporary pacemaking.” When its use is merely to temporarily replace or assist during a surgical procedure or operation for treatment, it does not qualify as a “medicine.” 1/28/91.

425.0202 **Baltherm.** This item is described as being used for “all procedures where myocardial performance testing is appropriate.” Since its use is limited to testing, its sales are taxable. 1/28/91.

425.0204 **Balwedge.** This item is described as used in “all procedures where myocardial performance testing is appropriate.” Since use is limited to testing, it does not qualify as a “medicine.” 1/28/91.

425.0205 **Barium Enema Bags.** Generally, medicine administration equipment such as enema bags, tubing and tips do not qualify as medicines under section 6369. However, when barium enemas are sold as units including disposable nonmedicinal items for their administration, the entire unit is considered to be a medicine as long as the medical portion of the unit is the major component. The sale of barium enemas in bags with tubing and tips is considered the sale of an exempt medicine. 6/5/78.

425.0206 **Bee Pollen Products.** Each of the bee pollen products submitted refers the reader to a statement that “We recommend you start with small amounts to insure against allergic reactions. As with any nutritional supplement, you may wish to first consult your physician.”

Bee Pollen products are food products exempt from tax so long as they are not described as food supplements or as having medicinal qualities. If the labels do not contain such statements, the products also must not be otherwise marketed as such. The brochure pages supplied stated that Forever Living Bee Pollen products in question are “food supplements.” These bee pollen products are excluded from the definition of “food products.” Sale of these products are subject to tax. 2/20/91.

425.0210 **Betadine Surgical Scrub.** Betadine Surgical Scrub is exempt as a “medicine” within the meaning of Revenue and Taxation Code Section 6369 and Sales and Use Tax Regulation 1591 as a result of the court’s decision in *Purdue Frederick v. State Board of Equalization*, 218 Cal.3d 1020 (1990). It is an antiseptic, microbicidal, sudsing skin cleanser distributed and sold to hospitals for preoperative use on patients, preoperative scrubbing by doctors, nurses and other operating personnel, and for hand cleansing by hospital personnel caring for and treating patients. 10/17/90.

425.0211 **Betadine Products Qualifying as Medicines.** Betadine is an antiseptic product and the following Betadine products are within the definition of “medicines” pursuant to Regulation 1591(b):

- (1) Betadine Antiseptic gauze and bandage—these are dressings impregnated with the Betadine Antiseptic for the purpose of preventing infection;
- (2) Betadine medicated douche;

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(3) Betadine whirlpool concentrate; and

(4) Betadine aerosol spray—this product is for use in cleansing wounds as part of a treatment. 3/7/91.

425.0211.750 **Biogran.** Biogran is a resorbable synthetic graft for use in repair of bony defects. It is a bioactive glass of narrow size range which has been shown to accelerate the healing of bone tissue in oral defects. As Biogran stimulates the healing of bone tissue and is permanently implanted, the sales of Biogran are exempt from tax under Regulation 1591. 2/25/97.

425.0212 **Biologics System 800 Air Lift.** The Biologic System 800 Air Lift is described as a bed designed specifically as a therapeutic device for treatment of persons with decubitus ulcers. The brochure does not describe how the bed treats the syndrome other than refer to the bed's "no air loss" technology.

The bed in question appears to merely support the patient in such a manner as to prevent further injury to the skin and to assist the natural healing process. As it is not worn on the body, it does not qualify as a "medicine". The bed is an appliance for applying treatment to the patient. The sales of this bed are subject to tax. 5/8/91.

425.0213 **Birth Control Devices.** Condoms and diaphragms, because they are temporarily used externally or internally as needed, are not within the definition of "medicines." 7/10/92.

425.0214 **Blood Collection Supplies.** Section 6364.5 provides an exemption for certain sales of blood-related items that are exempt from taxation pursuant to Revenue and Taxation Code section 33. Section 33 limits its exemption to blood products that are held in a blood bank for medical purposes. Therefore, sales of blood collection supplies to health facilities for use during surgical procedures are not covered by section 6364.5 and are subject to tax. 3/25/98. (M99-1).

425.0215 **Blood Monitoring Equipment, Glucose Test Strips and Related Supplies.** Blood monitoring equipment, glucose test strips and related supplies, other than insulin and insulin syringes, used by diabetic patients to determine his/her blood sugar level do not qualify as "medicines" under Section 6369(e), nor under any provision of Section 6369. The sale of such items are subject to sales tax although they may be prescribed by the patient's physician.

Any glucose solution either taken by or applied to the patient to determine glucose tolerance qualifies as a medicine. As such, tax does not apply to the glucose itself and any substance or preparation used to cleanse the patient's skin prior to performing tests. 8/20/85; 12/5/90; 8/29/91.

425.0220 **Blood Plasma.** A unit of blood plasma is exempt even though the unit includes an administration set constituting under 2 per cent of the total price of the unit. In general, however, administration equipment will not be regarded as included within the prescription medicine exemption. 9/13/62.

425.0225 **Branemark Bone Screw Device.** Branemark Bone Screw Device does not qualify for the prescription medicine exemption because it is a necessary

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component of a dental prosthetic device and has no independent significance. Revenue and Taxation Code 6369 (b)(1). 2/18/93.

425.0226 **Broach.** This item is used to ream out bone so that an artificial hip joint can be implanted in a patient. The “Broach” is not designed to be worn on or in a person and does not serve to support a body structure, replace a part of the human body, or assist in the functioning of a natural part of the human body. Therefore, the “Broach” does not fall within the definition of medicine and its sale is subject to sales or use tax. 1/25/96.

425.0227 **Bubble Humidifiers.** Bubble humidifiers are described as a humidifier adapter “with safety alarm pressure release and . . . bottle of sterile water,” all in a unitized package. The bubble humidifier comes in two sizes; has self cutting caps on wide-mouth bottles; flonometer nuts to resist cross-threading; a diffuser to create high humidity output for maximum patient comfort; a baffling system to cause large particle drain-back into the reservoir, reducing rain out in oxygen tubing; and a brass poppet pressure relief system. The items are sold for a single price.

Sterile water qualifies as a medicine. Humidification kits, which contain the sterile water are exempt based on the fact that bottles and caps are items used to contain and apply medicine. Thus, they are exempt from tax on sales of containers when the sale of the contents are exempt from tax. 11/25/91.

425.0227.600 **CapSure Contingency Shield.** The CapSure Contingency Shield is a nipple-shaped medical device that assists the female bladder to prevent accidental leakage of urine. It is worn external to the body and is applied and removed by the patient. This product keeps urine in the bladder until the patient removes it to urinate. This product is discarded in the trash at the first sign of wear or after 7 days of use, whichever comes first. Thus, CapSure Contingency Shield is a urinary incontinence device. Unlike the typical catheter and collection bag, the shield does not allow the urine to drain in a sanitary manner, but rather keeps it in the bladder until the patient is ready to urinate. It operates much like panty shields or diapers, which are not medicines. The CapSure Contingency Shield is a device or apparatus excluded from the definition of “medicine” under Regulation 1591, and its sales are subject to tax. 11/5/97. (M99-1).

425.0228 **Cardio-Cool.** Cardio-Cool is a moldable myocardial protection pouch used to protect the isolated heart during cardiopulmonary bypass surgery. It is designed and sold as a one time disposable product. Cardio-Cool’s special insulation pad provides a barrier to the cold in order to protect the phrenic nerve. None of the specific exemptions for prescription drugs or various medical devices are applicable to this product as provided by Regulation 1591. Therefore, sales of this product are subject to tax. 11/16/88.

425.0229 **Cast Shoes and Boots.** Cast shoes and boots are orthotic devices designed to be worn as support for the feet and toes; and are not an integral part of a leg brace, artificial leg or a custom-made biomechanical foot orthoses. Accordingly, they do not qualify as medicines. 3/9/93.

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425.0229.015 **Cast Shoes, Cast Sandals, and Post-Operative Shoes.** Cast shoes, cast sandals, and post-operative shoes are not part of a leg brace or artificial foot. These are not orthotic devices. The sales of these items are subject to tax. 5/28/92.

425.0229.700 **Catheter Leg Strap.** This is a strap that secures an indwelling Foley to patient's upper thigh without tourniquet action, eliminating the need for tape. Since the sales of Foley catheters have previously been determined to be exempt from tax, so then, are sales of straps used to secure such catheters to patients. 12/20/93.

425.0231 **Catheters.** Percutaneous Transluminal Angioplasty (PTA), Gastrointestinal Intervention, and Urinary Tract Intervention Catheters do not qualify as "medicines." On the other hand, a Percutaneous Transluminal Coronary Angioplasty (PTCA) catheter does qualify as a "medicine." 2/22/96.

425.0232 **Catheters.** The following named catheters are used for dilation rather than drainage and, thus, are appliances or devices excluded from the term "medicine" under Regulation 1591(c)(2).

Finalyson Ureteral Access Set

Balloon Ureteral Dilator Set

Omega Balloon Ureteral Dilation Set

Prostatic Dilation Catheter

Fogarty Arterial Embolism Catheter

This opinion assumes that these catheters are not permanently implanted in the patient. 4/15/94.

425.0232.001 **Catheters.** Laser angioplasty catheters are not "medicines" but rather are "instruments" excluded from the definition of "medicines" under Regulation 1591. Their sales are subject to tax. 9/24/97. (M98-3).

425.0233 **Catheters and Other Devices.** Pursuant to Regulation 1591(i) [now 1591.1(b)], tax does not apply to ". . . appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste" Therefore, sales of Pleural Cavity Evacuators, General Evacuators, Cranial Evacuators, Bronchial Tubes and Evacuators, Stomach Evacuators, and Emoloectomy Catheters are not subject to tax only where they are used in post-operative situations. Tax will apply when they are used temporarily during surgical procedures or when they are used for the administration of medication. 7/14/78. (Am. 2002-2).

(Note: Regulation 1591 was amended effective March 10, 2000, and further amended effective April 12, 2001. Reader should note the change to the subdivisions indicated above.)

425.0234 **Catheters-Post-Surgical Use.** Catheters which are used during surgery for drainage purposes and which also remain with the patient for post-surgical use may qualify as a "medicine" under Regulation 1591(b)(4) or

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(5). The catheter would qualify if it is intended to remain with the patient for some indefinite period. For example, surgery for hemorrhoids causes the urinary sphincter to close up. As a result, a urinary catheter is inserted prior to the surgery and remains with the patient until such time as he recovers control of the sphincter. The catheter would qualify as a medicine under Regulation 1591(b)(5) because it assists the patient with a natural function post-surgically even though, should the patient recover function quickly, it could be removed less than 24 hours after the surgery.

This example is distinguished from one in which the catheter used during surgery is intended to, and does, remain with the patient for only a short period of time and is replaced by a longer term catheter. 5/9/95.

425.0237 Ceprate SC Cell Concentration System. The CEPRATE SC System is used in a process called immunoadsorption which removes specific cells from the bone marrow or blood of human beings. The product will be used for the removal of stem cells from patients prior to their undergoing myeloablative (extremely high dose) chemotherapy. After the chemotherapy, the stem cells are returned to the patient. The CEPRATE SC System has been shown to significantly deplete tumor cells from blood prior to stem cell transplantation. Also, other impurities are removed from the patient's extracted blood as a result of this immunoadsorption procedure.

The CEPRATE SC System will be used by hospitals that perform transplant procedures and may only be used pursuant to the prescription of a licensed physician. The CEPRATE system is not a hemodialysis system within the meaning of Regulation 1591(j). It is not used in conjunction with artificial openings surgically created for the elimination of natural waste. Rather, it is an instrument for administering to a patient which is excluded from the definition of medicine under Regulation 1591(c)(2). Sales of the system are subject to tax. 10/28/96.

425.0242 Chair Back Braces. Chair back braces are orthotic devices and are exempt from tax if they are fully worn on the body of the user and used pursuant to a doctor's prescription. 2/9/78.

425.0245 Chemical Intrauterine Contraceptives. Sales of intrauterine contraceptives that operate by releasing chemicals within the uterus are exempt from tax when the devices are prescribed and furnished as required by Section 6369 of the Revenue and Taxation Code. 1/9/76.

425.0247 Chemoport Implantable Fluid System. This is an implantable system consisting of a portal and a catheter with a permanently locking connector. It allows for venous and arterial access for the infusion of medication, fluids, parenteral nutrition and sampling of blood.

It does not qualify as an implanted device because it is not permanently (i.e. for six months or more) implanted. It is not a prosthetic device because it does not replace or assist the function of a natural part of the human body. Additionally, it

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does not qualify as a programmable drug infusion device because it is not programmable. Therefore, its sale is taxable. 7/5/89.

425.0247.5 Chempads. Chempads used in conjunction with a Transcutaneous Electrical Nerve Stimulator (TENS) are considered exempt prescription medicines when they are sold in one of the two following ways:

- (1) The dosage is sufficient in strength to require a prescription; or,
- (2) If the TENS machine will not operate without the pads, the pads would be nontaxable as part of an exempt prosthetic device. 3/14/90.

425.0247.670 Cholangiocath 4FR, Urethral Catheter Round Tip, and Roth Grip-Tip Future Guide.

Cholangiocath 4FR is a disposable product used for dye injection during gall bladder surgery. Once x-rays are taken, the device is removed and discarded.

Urethral catheter round tip is a disposable urethral catheter used for dye injection for x-ray during cystoscopic examination. It is sometimes left in place for temporary drainage of the kidney or urethral.

Roth Grip-Tip Suture Guide is designed to grip and fixate enough of a transacted urethra to perform a clean bladder neck reanastomosis during radical prostatectomy.

All of these items are used temporarily during surgery and are not “medicines.” 5/17/95.

425.0247.700 Chondroitin Sulfate (CDS). CDS is a substance extracted from shark cartilage. It is used during ophthalmic surgery as a therapeutic agent and as a protective agent in surgical procedures involving the eye. CDS qualifies as medicine under section 6369 as it is used for internal or external application to the human body in the treatment of eye disease. Tax does not apply to the sale or use of this product as provided in Regulation 1591. 1/24/84.

425.0248 Cleaning Products. Products that cleanse the skin, treat skin disorders, or prevent adverse skin conditions are “medicines” within the meaning of Regulation 1591. The courts have held that the exemption also applies to cleansers when hospital personnel use them to wash their hands prior to treating patients, *Purdue Frederick Co. v. State Board of Equalization* (1990) 218 Cal.App.3d 1021, 267 Cal.Rptr. 482. Therefore, these products are “medicines”, the sales of which under appropriate conditions are exempt from tax. 8/21/91.

425.0250 Cleansing Agents. For sales of cleansing agents by medical supply houses to qualify for the prescription medicines exemption (Section 6369(a)(1), the sellers must qualify as “registered pharmacists”. Accordingly, a medical supply house which employs registered pharmacists may qualify for the exemption under Section 6369(a)(1). Sales by those supply houses who do not employ registered pharmacists would be taxable unless sold under conditions described in Section 6369(a)(2), (3), (4), and (5). 4/8/92.

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425.0252 Cloverleaf Cath Lab Pacing Probe. This product is used for “any clinical situation requiring temporary pacemaking.” When used as a temporary assist during a surgical procedure or operation, for either treatment or testing, it is taxable. 1/28/91.

425.0255 Collagen Corneal Shield. Collagen Corneal Shield is a transparent, thin, pliable film of bovine collagen which is used to help reduce post surgical corneal trauma and stress in patients with compromised corneal or acute epithelial defects.

This product is considered to be a temporary biological dressing whose function it is to protect the cornea while it is healing. As a result, its sales are subject to tax. 10/8/91.

425.0256 Collastat. Collastat is an absorbent sponge which is applied to the site where homeostatic (arrest of bleeding) is desired. The basic material of this product is collagen obtained from the achelther tendon. It is used in surgical procedures to control bleeding.

Collastat performs the same functions (i.e. stopping bleeding) as do traditional dressings or bandages and so is in the nature of a temporary biological dressing. Therefore, it is not a medicine and, thus, the sales are subject to tax. 10/8/91.

425.0257 Colles Fracture Splint. This specialized splint is attached to the wrist and long fingers of the hand by use of metal pins inserted into the bones of these body parts. This device is fully worn on the person and qualifies as an orthotic device which is classified as a “medicine.” 1/10/84.

425.0259 Colostomy Care Kits and Tracheotomy. These care kits contain the supplies required by the patient to administer self-care, and, as such, they fall under the “necessary related supplies” language in Section 6369(g) and are medicines. 10/2/89.

425.0260 Colostomy Drain Bag. A colostomy drain bag is an exempt medicine pursuant to Revenue and Taxation Code Section 6369(g) and Sales and Use Tax Regulation 1591(j). 5/10/88.

425.0265 Components of Drug Infusion Devices. Components of an infusion system such as tubing, catheters, filters, infusion bottles, bags, pumps, intravenous poles, needles and syringes are devices which are excluded from the definition of “medicines” under Regulation 1591 (c)(2). 10/3/90.

425.0267 Computerized Ambulatory Drug Delivery Pump. The Computerized Ambulatory Drug Pump is a programmable drug infusion device and is an exempt medicine under 6369 (c)(6). 6/12/89.

425.0269 Condom. Sales of condoms at student health centers are subject to tax. Condoms are not exempt as “medicines” even if furnished pursuant to a prescription. 6/4/90.

425.0269.800 Continuous Passive Motion Device. Continuous passive motion units are specially designed electrically powered apparatuses fitted for the ankle,

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knee, hip, elbow, or finger. They are worn for a period of one to four weeks and stimulate healing or regeneration of articular tissues, prevent joint stiffness, and permit normal healing of arthrotomy incisions. They are designed to assist the functioning of a natural body part. Thus, when fully worn on the body, they qualify as “medicines.”

Tax applies as follows to specific units:

Elbow, shoulder and finger units. These units are to be fully worn on the person or user and, therefore, they meet the definition of orthotic devices pursuant to Regulation 1591(b)(4).

Knee and hip units. The use of these devices is restricted to patients who must lie in bed while the device is attached to a stationary object such as the patient’s bed frame. Therefore, the device does not permit ambulatory movement and is not fully worn on the person or user. Thus, it does not meet the definition of orthotic devices pursuant to Regulation 1591(b)(4). 11/8/85; 12/13/88.

425.0270 Continuous Positive Airway Pressure Machine and Humidifier.

The continuous positive airway pressure machine is an oxygen delivery system. This machine supplies a small amount of positive air pressure through a hose connected to the nasal airway, which keeps the airway from collapsing. An oxygen system such as this, which delivers air or oxygen into the breathing system of the patient is a medical oxygen delivery system within the meaning of Regulation 1591(m). Sale of this product in accordance with Regulation 1591(m) is exempt from tax. On the other hand, devices that only assist the patient in breathing and do not deliver air or oxygen directly to the patient do not qualify as medical oxygen delivery systems. Sales of CPAP humidifiers which are an integral part of the CPAP system, delivering humidified air directly to the patient (as opposed to room humidifiers), are also exempt from tax. 3/8/91; 5/13/96.

425.0275 Coronary Stents. Coronary stenting is a technique which mechanically props open the artery through implementation of a small, latticed stainless steel tube at the site of the narrowing. The stainless steel tube, the stent, is premounted on a coronary angioplasty balloon catheter. As the balloon catheter is inflated during angioplasty, the stent expands and is compressed against the artery walls. When the balloon is deflated, the expanded stent remains implanted in the artery. This technique of mechanically propping open the artery with the stent greatly reduces the rate of clinical restenosis.

Since the stent remains permanently implanted in the body and assists the circulatory system by holding the affected artery open after the angioplasty procedure, it qualifies as “medicine” under Regulation 1591(b)(2). Its sales are exempt from tax. 11/21/97. (M99-2).

425.0280 Corrective Appliances. Chiropractors are required to pay sales tax on the fair retail value of corrective appliances furnished to patients. 11/7/60.**425.0290 Corrective Pessaries.** Corrective pessaries, which are placed in a uterus in order to reposition it in cases of backache, abnormal bleeding, dysmenorrhea, post partum retroversion, post partum involution, sterility,

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pregnancy and a prolapsed ovary and worn by patients for varying lengths of time (i.e., for a week, month or for the rest of the patient's life) according to the specific condition for which they are prescribed, are "orthotic devices." As such, tax would not apply to the sale of these items. 12/6/77.

425.0292 CPM Pads and Hypothermia Blankets. Both items are used in conjunction with Hot/Ice Machines, as part of the orthopedic surgical process, to promote post operative healing and are only available on a prescription basis. In addition to acting as a "brace, support, or correction", for the body structure, they are also used after implantation surgery to control body temperature.

These two items are not functional without the Hot/Ice Machines and thus cannot be fully worn on the patient. Therefore, neither qualifies as an exempt orthotic device under Regulation 1591 and the sale of such items are subject to tax. 8/1/89.

425.0292.500 Cranial Prostheses Accessories (hat, caps, turbans, etc.). A prosthetic device must assist or replace a natural part of the body. Under strictly defined circumstances, a wig can do that. On the other hand, a hat does not assist or replace a natural part of the body. It covers the head. Wearing apparel is not listed in Regulation 1591 among items deemed to be "medicines," nor does it even qualify as "related supplies." Its purposes are generally cosmetic, or fashion, or to supply protection for the head in addition to that supplied by hair. Therefore, hats and caps, etc., do not qualify as medicines and their sales are subject to tax. 8/18/97. (M98-3).

425.0293 Cryomat and Cryopak. Cryomat and Cryopak are both reusable liquid filled therapeutic ice products used by medical doctors, physical therapists, and others for the treatment of such injuries as contusions, sprains, strains, etc. Both products are externally placed on the part of the body where treatment is desired. The only difference between Cryomat and Cryopak is in their configuration. Cryomat consists of an 11x16 sheet of liquid filled pouches and Cryopak has pouches individually separated from each other to allow greater ease and versatility in treating acute contours of the human body.

The use of Cryomat and Cryopak is not an external application of a substance or preparation as contemplated by section 6369(b). The injured area being treated will experience a cold sensation resulting from the cold liquid pouches, however, no ingredient or comparable component of Cryomat or Cryopak is absorbed by the body. Therefore, Cryomat and Cryopak are not "medicines" and their sale is subject to tax. 4/6/88.

425.0295 Custom-Made Foot Orthosis. As a result of "Charcot's Joint", defined as a neurogenic joint disease caused by diabetes, a doctor prescribed shoes which were built from casts of the taxpayer's feet to enable the taxpayer to walk and to prevent infection and amputation.

The shoes qualify for the exemption under Regulation 1591(b)(4) as "custom-made foot orthosis" even though the shoes may be sold by the vendor of such devices rather than a medical organization. 1/13/92.

PRESCRIPTION MEDICINES (Contd.)

425.0298 **Denis Browne Bar.** Denis Browne Bar is a device worn on the leg that does not allow motion of the feet; it prevents the feet from movement as a splint would. Therefore, it is not a brace under section 6369(c) and, thus, is not entitled to the exemption from the sales or use tax provided under section 6369(c). 4/21/95.

425.0299 **Devices.** Walking heels utilized in conjunction with leg or ankle casts are exempt as a necessary part of the cast. Head halters are not medicines unless they are fully worn on the person of the user. If they are attached to a bar or other device, they are taxable. Elastoplast and Pegolastic are medicines if the purpose of their use is to brace, support, or correct the body structure. 7/14/78.

425.0300 **Dialysis Fluid.** Dialysis fluid, which is prescribed by a physician and is used in an artificial kidney machine to remove impurities from the patient's blood, is a medicine within the meaning of Section 6369. 5/31/68.

425.0310 **Dialysis Machine Peripherals.** "Dialyzer reprocessing system" cleans, tests and sterilizes the kidney dialysis machine (dialyzer), allowing it to be used again rather than discarded. "Data management system," a mini computer with software, is connected to the dialyzer and records its reuse and prints dialyzer labels.

Although Regulation 1591(j) includes in the definition of "medicine" certain "... appliances and related supplies . . . ," the two systems described above do not meet the requirement that they be an integral part of the machine itself since the dialyzer can operate effectively without either one. 3/24/86.

425.0315 **Dialyzers.** Dialyzers allow filtration of the blood while a patient is undergoing treatment on an artificial kidney machine and are, therefore, exempt as a related supply used in conjunction with that machine. 7/6/78.

425.0320 **Diaperene Powder, Ethyl Alcohol and Baby Oil.** Sale of Diaperene powder, ethyl alcohol and baby oil to state hospitals is not taxable. The items are considered medicines under the Revenue and Taxation Code and Regulation 1591. 11/28/69.

425.0325 **Disposable Adult Diapers, Pant and Pad Systems.** Incontinent supplies such as disposable adult diapers, pant and pad systems are excluded from "medicines" under Sales and Use Tax Regulation 1591(c)(2). Accordingly, tax applies to the sale of such items notwithstanding the fact that they are sold on a prescription basis. An exception to taxation would be ostomy appliances and supplies described in Regulation 1591(j). 2/29/84; 11/17/92.

425.0330 **Disposable Automatic Clip Appliers.** The application of tax to disposable automatic clip appliers is as follows:

(1) Disposable automatic clip appliers used to bind (ligate) vessels or body tissue with an absorbable substance similar to thread are a type of "suture" and would be included within the term "medicine" pursuant to Regulation 1591(b)(2). These instruments contain an integral cartridge containing absorbable copolymer ligating clips, and together with the applier are sold as one

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disposable unit. It has applications in many types of surgical procedures where an absorbable or radiotransparent ligature is indicated or desired.

(2) Disposable automatic clip appliers primarily used for procedures such as cutting or stopping the flow of blood are in the nature of surgical appliances or devices and as such would be excluded from the term "medicine" pursuant to Regulation 1591(c)(1). These instruments contains stainless steel clips, and both clip cartridge and applier are sold together as one disposable unit. It has applications in many types of surgical procedures to provide hemostasis and occlude vessels or tissue structures and other tubular structures and for vagotomy, sympathectomy, and radiographic markings. 1/13/86.

425.0334 Disposable Dye Packs. Dye packs are used to surgically implant dyes in a patient's eyelids to form a permanent eyeliner for cosmetic purposes in cases where the patient is allergic to commercially sold eyeliner or in cases of reconstructive surgery. The dye packs fail to meet the definition of "medicine" as they are not administered to diagnose, cure, mitigate, treat, or prevent a particular disease, including allergies. 7/3/85.

425.0335 Disposable Dye Packs. The dye packs contain highly sterile dye that is surgically implanted into the eyelid of patients, producing a permanent eyeliner and are distributed to ophthalmologists and plastic surgeons. The disposable pack is used once during this procedure. This product is often used for cosmetic purposes, in cases where patients have allergic reactions to commercial eyeliner, or in cases of reconstructive surgery. The disposable dye pack is available only to licensed medical doctors and is not sold to the general public.

The disposable dye pack is not administered to diagnose, cure, mitigate, treat or prevent a particular disease. It is used for cosmetic purposes and is not included within the definition of "medicine." In situations where the dye pack is utilized in reconstructive surgery, further information would be needed for consideration as to whether the dye may have a medical function. However, if the dye is used for cosmetic purposes, even though as part of reconstructive surgery, it will not be within the definition of "medicine." 7/3/85.

425.0340 Distilled Water. Although used to prevent digestive problems, distilled water is not entitled to exemption as a medicine. 2/17/65.

425.0352 Dynowalker. The primary purpose of this product is the immobilization of the lower leg and foot in relation to each other rather than support of the body structure. Therefore, this item is considered to be in the nature of splints under Regulation 1591(c)(2) and is excluded from the definition of "medicine." 7/29/96.

425.0355 Electric Three-Wheel Scooter. A durable medical equipment company sells an electric three-wheel scooter that can be utilized as an electric wheelchair. The scooter appears to be similar in both design and function to a conventional four-wheel electric wheelchair, except that the scooter is smaller, more compact, and has only three wheels. It was indicated that Medicare recognizes this device as a covered item if medically necessary.

PRESCRIPTION MEDICINES (Contd.)

Electric three wheel scooters such as the described scooter qualify for the medical exemption under Regulation 1590(k). Tax does not apply to the sale or rental of an electric three wheel scooter to an individual for the personal use of that individual as directed by a physician. In order to ensure that the sale or rental of electric three wheel scooters meets the criteria for exempt status, the retailer should obtain a written statement from either the customer or the physician that the scooter is for the personal use of the customer as directed by a physician. The written statement should be retained. 10/25/85.

425.0360 **Electrocardiographs.** Electrocardiographs, metabulators, and their related accessories do not qualify as exempt “medicines.” 10/30/62.

425.0365 **Electronic Speech Aid Devices and Accessories.** Electronic speech aid devices are electronic devices for those who suffer temporary or permanent loss of voice from such causes as laryngectomy, illness, injury or paralysis. The electronic circuitry and batteries are contained in a packet which can be put in a pocket or fastened to a belt. A cord connects the packet to a Tone Generator which is held in the hand. Sound from the packet is delivered directly into the mouth through a slender plastic tube (connected to the Tone Generator) which is placed in the mouth when the user wants to speak. A push button on the Tone Generator starts and stops the packet’s sound which results in a speech effect by the user.

The electronic speech aid device cannot be considered a “substance or preparation intended for the internal or external application to the human body” pursuant to Regulation 1591, since the item is a device or its component parts used to facilitate human speech. Therefore, the electronic speech aid device more accurately reflects items in Regulation 1591(c)(2) which are specifically excluded from the definition of medicine. Thus, the sale of the electronic speech aid device is taxable. 7/8/86.

425.0370 **Emergency Transmyocardial Pacing Unit.** This kit is used in “Emergency situations where cardiac electrical activity or sufficient blood flow is not present.” When used as described it is regarded as an “appliance, etc.” of which sales are taxable. 1/28/91.

425.0380 **Enema Preparation.** The sale of an enema preparation in a container which also serves as a disposable tube applicator is exempt from tax. The enema preparation is an exempt medicine (§6369); the container is an exempt container (§6364) regardless of it also serving as an applicator. 3/12/65; 5/15/85.

425.0382 **Entriflex, Keofred, and Enteral Tubes.** All of these are feeding tubes and are rarely ever used for any other purpose. Thus, they are taxable. 10/2/89.

425.0384 **ErecAid System.** The ErecAid System is a vacuum tumescence/constriction therapy device used in the treatment of male impotence. The system consists of a vacuum cylinder, elastic tension rings and a special vacuum pump. The pump and the cylinder are removed after engorgement and rigidity are achieved and the tension rings remain. As such, this device cannot be considered to be fully worn on the person of the user when it is replacing or assisting the

PRESCRIPTION MEDICINES (Contd.)

function of a natural part of the human body. Therefore, it does not qualify as a prosthetic device under Regulation 1591(b)(5) and its sale is subject to tax. 2/16/90.

425.0385 **Ewald Tube.** This tube is inserted through the bowel into the large intestine and is used primarily for diagnostic purposes. Thus, Ewald tubes are taxable. 10/2/89.

425.0386 **Ferris PolyMem Dressing.** This dressing is described as being four products in one. It is made of a biocompatible and absorbent polyurethane base which contains “F68 surfactant” to cleanse the wound, glycerin to moisturize and soften “necrotic” (dead) tissue and provide nonadherent release from the skin, and superabsorbent polymer to draw, absorb, and hold exudate away from the wound. PolyMem provides “Autolytic debridement” (excision of devitalized tissue and foreign matter from a wound). It also contains moisturizing and cleansing agents that help the wound release necrotic tissue.

It appears from the description that the primary purpose of the glycerin and F68 surfactant is to draw fluids out of the wound, to permit the release of the scab, and to prevent the dressing from adhering to the wound itself. Such characteristics are designed to make the dressing work better. They do not provide treatment for the wound over and above that provided by nonmedicated dressings. Therefore, this dressing is not a “medicine” under Regulation 1591. 10/24/95.

425.0388 **Fogarty Embolectomy Catheters.** A facility which provides hemodialysis treatment to patients purchases the Fogarty embolectomy catheters solely for use in this treatment.

The Fogarty embolectomy catheters qualify as tax exempt “medicines” when they are used in the treatment of patients undergoing hemodialysis. Accordingly, the purchase of this item is not subject to tax. 5/11/84.

425.0390 **Artificial Limbs—Training.** Tax applies to sales of artificial limbs to medical training facilities for the purpose of training a prosthetist. 10/30/72.

425.0391 **Fecal Collection, Leg Drainage Bags, Billiary Drainage Bags and Urinary Incontinence Pouches.** If bags are worn on the person of the user (a taped on bag is fully worn), they are exempt prosthetic devices. When a bag is not worn because of mobility problems, they are taxable unless exempt under Section 6369(g) which relates to supplies for ostomy devices. 10/2/89.

425.0393 **Five-In-One Pace-Jector.** This item is used to inject medication into the heart during periods when the pulse beat drops below (20) beats per minute or during emergency asystole or symptomatic bradycardia. Since it is used to administer medication during emergencies, it is regarded as an “appliance, etc.” sales of which are taxable. 1/28/91.

425.0395 **Flaxedil.** Flaxedil used in conjunction with most anesthetics in surgical operations to reduce bucking, coughing, and bronchospasm caused by the introduction of an anesthetic is an exempt medicine. 5/31/74.

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425.0397 Full Cranial Prosthetic Devices. Sales of wigs for treatment of hair loss due to alopecia, burns, chemotherapy, and radiation qualify for exemption when the wigs are sold pursuant to the order of a physician, even though the wig may be sold by a person other than a medical organization. Persons claiming such exemption on their sales and use tax returns must retain a copy of the doctor's order and a record of the name of the purchaser, date of sale, item sold, and the sales price. Sales of wigs which are not sold pursuant to the order of a physician and surgeon for treatment of a medical condition are taxable. 4/27/90.

425.0398 Futurplex Flower Essence. The brochures states: The Futurplex Flower combinations have been formulated to act in and regulate human bioenergy. These combinations are catalysts for the release of entrapped and stagnated energy, allowing previously blocked or suppressed energies to be available for use. The formulas help provide the bioenergetic environment through which one can evolve toward one's full emotional spiritual potential.

There is no indication that these products do anything specific to promote health or prevent disease; general statements such as the one quoted above do not elevate these products to the status of a "medicine". Sales of these products are subject to tax. 11/25/91.

425.0399 Gastrostomy Tubes and Kits. The following items listed are part of a system used to administer nutrients to tube feeders, i.e., patients who, due to disease or surgery, cannot take food through the mouth. These items are temporarily implanted and not intended to remain in place for a period of six months or longer. There is no statutory exemption which covers the administration of feed to a patient. As a result, while the feed itself may be considered a medicine, the administration apparatus is not. Thus, the following items are subject to tax when used as feeding apparatuses:

Enteral Nutrition Container—Used for the convenient administration of large (and small) volume enteral feedings.

Laparoscopic Gastrostomy Kit—Used for laparoscopic placement of an enteral feeding tube into the stomach.

Gastrostomy Tubes—For use in patients with an established gastrocutaneous fistula tract, resulting from a previously placed gastrostomy tube, or as a primary tube during surgical placement using the Stamm or Weitzel procedure. It is designed to receive the Jejunal Feeding tube and hold it securely.

Enteral Nutrition Pump—Used for a controlled, accurate delivery of enteral feedings.

Enteral Nutrition Bag—For convenient top-fill administration of large-volume enteral feedings.

Some items of the same name which have different primary uses have different tax consequences. For example, some gastrostomy tubes have the primary function of removing waste and feed from the stomach and, for that reason, qualify as medicines. On the other hand, gastrostomy tubes described above are temporarily implanted in the patient for feeding purposes and, therefore, are taxable. 11/22/94.

PRESCRIPTION MEDICINES (Contd.)

425.0400 Glucose Tolerance Test. Substances used in the “glucose tolerance test” are exempt when used by a physician for internal application to the human body in the diagnosis of disease. 8/27/65.

425.0405 Goat, Sheep, Bovine Sera. These are blood products of animals of a kind whose products constitute food for human consumption. They are used in laboratories as a test medium.

The exemption provided by Section 6358 applies only to the sale of live animals and not to sales of the products of animals when the product is not otherwise exempt. Thus, the sales of these products are taxable. 10/2/89.

425.0408 Hearing Aid Supplies. Eargene, Dri-Aid and forced air blowers are not necessary accessories or component parts of hearing aids. They simply assist in the function of the hearing aid. Thus, sales of these products by a hearing aid center are subject to tax measured by the sales price to the customer. 10/30/87.

425.0408.300 Heel and Elbow Protectors. Heel and elbow protectors are taxable unless necessary as a result of a prosthetic or orthotic device. 5/2/80.

425.0408.500 Heimlick Chest Drain Valve and Under Water Drainage Set. Both of these products qualify as medicines under Regulation 1591(j) because they are appliances and related supplies necessary as the result of a surgical procedure by which an artificial opening is created in the human body for elimination of natural waste. Therefore, the sale of these products is not subject to tax. However, in order to qualify as medicines under Regulation 1591(j), they must be used in post-operative situations. 5/17/84.

425.0409 Hemodialysis Products.

(1) Mahurkar Kit. Described as a dual lumen polyurethane central venous catheter with kit containing items needed for catheter placement via Seldinger technique and used for short term use for kemodialysis or abperesis (pheresis).

Tubing and catheters are necessary and integral supplies used in conjunction with artificial kidney dialysis machines and are not subject to tax.

(2) Perm Cath Repair Kit. Described as a kit containing external catheter replacement section and accessory items to repair a damaged Perm Cath. Used to repair damaged external portion of Perm Cath, it is a “related supply” for hemodialysis and not subject to tax.

(3) Peri-Patch Pertoneal Catheter Extension Set. Described as a silicone rubber replacement section for repair of peritoneal catheters, one of three parts used to repair the damaged external portion of the peritoneal catheter. It is considered “related supplies” for hemodialysis and not subject to tax.

(4) Silicone Adhesive, Type A, Medical Grade. Described as silicone adhesive, sterile, provided in 8gm tubes, and used in the repair of various catheters (along with other components). It is a “related supplies” for hemodialysis and not subject to tax.

The exemption for “related supplies” and hemodialysis products is broad enough to include repair or replacement parts, described in 2, 3, and 4 above,

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since these parts are “products” and are necessary and integral to the proper functioning of the dialysis machine and other related items. This exemption only applies to parts used to repair or refurbish items the sale of which are not subject to tax. Tax applies to sales of repair or replacement parts for items the sale of which are taxable.

(5) Peri-Patch Glue Mold. Described as a hinged polypropylene mold with locking ring, one of three parts used to repair the damaged external portion of a peritoneal catheter.

(6) Beta-Cap Adapter. Described as a ultem adapter. Placed in the proximal end of peritoneal catheters to allow the catheter’s connection to other mating parts (Beta-Cap Cap), injection sealing cap (transfer set).

(7) Beta-Cap Cap. Described as part Beta-Cap closure system which provides an infection barrier for peritoneal catheters when used with providone-codeine solution. Placed in the proximal end of peritoneal catheters to allow the catheters connection to other mating parts (Beta-Cap Cap) injection sealing cap (transfer set).

(8) Beta-Cap Clamp. Described as peritoneal catheter clamp. Used to “clamp-off” the external portion of a peritoneal catheter.

As with repair parts, with respect to items 5, 6, 7 and 8 above, the taxability of the sales of parts used to adapt an item to use depends in part on the taxability of the sale of the items being used. Sales of parts sold for the purpose of adapting catheters for use are exempt from tax if the catheter is put to exempt use.

(9) Infusion T. Described as a closed vascular access made of three components: a double beveled connector with protective claps, an injection, and 6” length of polyvinylchloride tubing. The infusion T connects to an A-V cannula to provide access to the blood system for the administration of meds, fluids, or blood sampling.

If the medicines, fluids, or blood sampling is administered as an integral part of the dialysis process, the infusion T used to administer them would be considered a “related supply” the sales of which are exempt from tax. If used in day to day patient care, the sales would be taxable. 12/31/90; 5/14/91.

425.0410 Herbs and Supplements. A licensed acupuncturist in the state of California, with a doctorate in oriental medicine, is considered a primary health care practitioner in the state of California. The acupuncturist dispenses herbs and supplements to patients.

The Legislature, in adopting the language in Section 6369(a)(1) Revenue and Taxation Code chose to adopt the limiting definition of “prescription” found in Section 4036 of the Business and Professional Code rather than the broader interpretation implicit in Section 4937 Business and Professional Code. The reference in Revenue and Taxation Code Section 6369(a)(1) to “person authorized to prescribe medicine” means that person must be a physician, dentist, or podiatrist. Unless the acupuncturist is also licensed as one of these entities, his/her prescriptions are not exempted from the sales and use taxes as being

PRESCRIPTION MEDICINES (Contd.)

within the prescription medicine exemption. In addition, the prescription must be filled by “a registered pharmacist in accordance with the law”.

Since the sales are made for medicinal purposes, the herb and supplement sales also do not qualify under the food product exemption. 12/31/91.

425.0413 **High Voltage Pulsed Galvanic Stimulator.** High Voltage Pulsed Galvanic Stimulator (trade name “GVII”) is designed to be fully worn on the body of the user and is used to promote pain control or neuromuscular stimulation via the passage of small electrical current through the patient’s skin. “GVII” performs the same function as a transcutaneous electrical nerve stimulator (TENS) and is a prosthetic device under Regulation 1591(c)(5). Since “GVII” is designed to be fully worn on the body of the user, tax does not apply to its sale when sold pursuant to a physician’s prescription. 8/31/88.

425.0415 **Hospital Beds.** Regulation 1591(b)(4) & (5) explains that certain orthotic or prosthetic devices may be within the definition of “medicine,” if they are designed to be worn in or on the person of the user. Hospital beds, regardless of how specialized or beneficial, are not includable because they are not worn on the body of the patient. To wear something means to have it physically on the person. The test is not whether the patient is always in contact with the item because the patient cannot move, but rather whether the item accompanies the patient on the patient’s body when the patient does move. 4/29/94.

425.0417 **Human Sperm.** The sale of human sperm to medical personnel for use with their clients and directly to women for self insemination is exempt. 6/15/93; 8/20/96.

425.0418 **Hydrocephalus Devices.** The following items used in the treatment of hydrocephalus are exempt from tax since they are permanently implanted in the human body to assist the functioning of the brain:

Pressure Regulating Components:

Cruciform Slit Valve

Ventricular Access Devices:

Ventricular Catheter

Catheter Reservoir

Slotted Catheter Reservoir

Slotted Frontal Horn Catheter Reservoir

Slotted Ventricular Catheter

Frontal Horn Catheter Reservoir

McComb Neonatal Catheter Reservoir

Proximal and Distal Components:

Rickham Type Reservoir

Fixation and Joining Connectors

Burr Hole Catheters Support

Distal Catheters:

Atrial Catheters

Peritoneal Catheters. 3/1/84.

PRESCRIPTION MEDICINES (Contd.)

425.0420 **Hypodermic Needles.** Generally, intravenous sets, syringes and needles (whether disposable or not) are devices or appliances and are not exempt medicines. Effective January 1, 1983, insulin syringes qualify as exempt medicines provided they are furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician. 11/13/62; 4/10/84.

425.0422 **Hypodermoclysis Administrative Sets.** These items are used for subcutaneous injection of a saline or other solution. The set consists of two roller clamps, two flash tubes, two male adapters, and two unattached 22 gauge needles. Appliances to administer saline and other solutions are excluded from the definition of “medicines” under Regulation 1591(c)(2). Thus, sales of these items are subject to sales or use tax. 5/23/95.

425.0425 **Hypo-Hypertherm Pads.** Hypo-hypertherm pads are placed upon the bedridden patient to regulate the patient’s body temperature. Hot/ice machines are used in conjunction to regulate body temperature. Such items do not qualify as “medicines” since they can not be fully worn on the patient. 6/16/93.

425.0427 **Hypothermia Blankets.** Sales of hypothermia blankets to a hospital are subject to tax as durable pieces of medical equipment. The fact that some may be used in conjunction with kidney dialysis machines does not affect this conclusion. 3/1/89.

425.0430 **Implantable Defibrillator and Related Devices.** The microprocessor based programmable implantable defibrillator is a device which is implanted in a patient with a heart dysfunction for up to seven years. The device monitors the patient’s heart signals and detects abnormal heart rates. Once detected, the device provides a defibrillation energy to correct the heart rhythm. The implanted defibrillator is connected to the heart via leads which are also implanted with the device. Both the implantable defibrillator and the implantable leads qualify as exempt medicines under Regulation 1591(b)(2).

The implanted defibrillator is inoperable without first being programmed by the doctor. This is done with a receiving and transmitting defibrillator programmer which is not implanted in or on the body.

A high voltage stimulator is an electronic instrument used during the implantation surgery for the defibrillator device to evaluate the proper pacing and defibrillation setting and therapies to be programmed into the device by the programmer. It is not implanted in or on the body.

Both the defibrillator programmer and the high voltage stimulator do not qualify as exempt medicines because they are not implanted in the human body. They are in the nature of medical devices or appliances specifically excluded from the term “medicine” under Regulation 1591. 11/30/89.

425.0435 **Incontinence Creams and Washes.** Incontinence creams and washes qualify as exempt “medicines” when sold under conditions set forth in Regulation 1591(a) (e.g. sale under prescription by a registered pharmacist). On the other hand, over the counter sales are subject to tax. 6/16/92.

PRESCRIPTION MEDICINES (Contd.)

425.0440 **Influenza Vaccine Administered to Employees.** A company purchases influenza vaccine for inoculation of its employees. The sale of the vaccine to the company is made pursuant to the authority of a licensed physician and the employees consent to be the patients of the employer's doctor for the purpose of being inoculated. The sale of the vaccine for such purpose is an exempt sale of medicine under Section 6369(a)(1) and (a)(2). 7/21/67.

425.0460 **Insulin.** Sales of insulin by druggists for treatment of diabetes will be presumed to be furnished upon the direction of a physician so as to fall within the exemption provided by Section 6369 in the absence of evidence to the contrary. 10/28/64.

425.0462 **Insulin and Insulin Syringes.** Since the statute does not mention "related supplies", test devices such as glucose monitors and glucose test strips do not qualify for the exemption.

As the legislature has seen fit to exempt sales of insulin syringes only when sold to diabetics by registered pharmacists, it follows that sales of other syringes are subject to tax. 3/31/92.

425.0463 **Insulin Syringes.** Sales of insulin syringes to a patient by a pharmacy qualify for the prescription medicine exemption. However, sales of insulin syringes to medical facilities for their own consumption are subject to tax. 3/31/92.

425.0470 **Interceed Barrier.** An Interceed Barrier is a sterile knitted fabric used to reduce adhesion formation in pelvic surgery. It is absorbed by the body within a few weeks. It is regarded as a "medicine" and its sale is exempt if sold or furnished pursuant Regulation 1591. 11/4/93.

425.0473 **Interferential Stimulator.** Interferential stimulators use electromagnetically induced current to promote the union of mandibular fractures without the necessity of surgery. Sales of these devices qualify for the prosthetic device exemption and tax does not apply when prescribed under the conditions described in section 6369 and the device prescribed is to be fully worn by the patient. 2/13/91.

425.0480 **Intravenous and Irrigation Solutions.** Intravenous and irrigation solutions constitute medicines and when furnished as described under (a) of Regulation 1591 are exempt. 9/13/62.

425.0481 **Intravenous (IV) Sets.** An IV set is used for the purpose of introducing drugs, nutrients, and diagnostic substances into a patient. They are made of metal or other durable components and so are not "substances or preparations". They are not worn on the person of the patient. They also do not depend on being metabolized within the body to achieve their intended purposes.

IV sets are devices or appliances within the meaning of Section 6369 (b)(2). Sales of such devices are thus subject to tax. 1/11/93.

PRESCRIPTION MEDICINES (Contd.)

425.0483 **Intravenous Tubing.** Intravenous tubing is not a medicine and is, therefore, subject to tax even when used only according to a physician's orders. 5/1/78.

425.0483.200 **Items Excluded from the Term Medicine.** The following items are excluded from the term medicine pursuant to Regulation 1591(c)(2) and, therefore, the gross receipts from their sales are subject to tax:

Airway (Adult)	Labels
Airway (Infant)	Laceration Tray
Airway	Mook
Adapter	Needle
Apron	Needle Counter
Arm Board	Pillow Cover
Blade	Scissors
Blade and Needle Guard	Shoe Covers
Bandage—Elastic	Sponge
Bandage—Esmark	Staple Extractor
Bandage—Kling Elastic	Stethoscope
Cabinet 42C7	Stopclock
Disposable Bed Pan	Syringe
Dust Cover	Table Paper
EZ Prep Tray	Tape
Forceps	Tongue Blade
Gauze	Tourniquet
Glove	Tray
Gown	Wash Basin
IV Pole	X-ray Cape. 3/17/88.
Kleenex	

425.0483.400 **IV Sets.** IV sets are used to deliver as many medications or solutions into a patient through the same tubing as is practical. They are designed to allow multiple entry ports for injections of different drugs. Included within this general category (IV sets) are “blood sets” used to deliver blood and blood products; “hyperclementation sets” used to deliver food into the patient through an incision in the stomach; “nasogastric sets” used for artificial feeding through the patient's nose and down into the stomach; “gastronomy parts” which are surgically implanted in a patient for use when injecting “meal replacements” into the body; “anesthesia sets” to introduce anesthetics into the body; “radiology sets” used to introduce contrast media to the body for diagnostic imaging purposes; and “face covers and tubing” used to deliver gases via the respiratory system.

IV sets are not “substances and preparations.” In general, they are “appliances, devices or other . . . equipment” of the type specifically excluded from medicines under section 6369(b)(2). 4/22/97.

425.0484 **Karaya Gum Powder.** This item qualifies as a medicine as “necessary and integral” to the operation of an ostomy device. Therefore, the sale of this item is exempt from sales or use tax. (Regulation 1591(j).) 5/23/95.

PRESCRIPTION MEDICINES (Contd.)

425.0487.550 **Kunzli Ankle Support.** The Kunzli Ankle Support is designed as one piece, with the brace portion built into the shoe portion. Each Kunzli Ankle Support system is custom fitted to the patient, according to a doctor's prescription, by the use of four removable custom moldable stabilizers.

The Kunzli Ankle Support is an off-the-shelf, pre-made item that allows for modification by customizing the four moldable stabilizers. It appears clear that the device is an orthopedic shoe. There is no evidence that the legislature intended to limit its exclusion of "orthopedic shoes" from the definition of "medicine" to those designed to support only the foot and not those designed to support only the ankle. It would be too narrow a reading of the statute and regulation. The phrase "for the foot" in the statute modifies "supportive devices," not "orthopedic shoes." All orthopedic shoes are excluded from the medicine exemption except those conforming to the exceptions in section 6369(3)(A). Since the Kunzli Ankle Support does not meet these exceptions, it does not qualify as a medicine for purposes of the exemption. 1/11/96.

425.0488 **Laparoscopy Supplies.** Items used temporarily during laparoscopic surgery are devices, appliances, etc., which are excluded from the definition of "medicine" under Regulation 1591(c)(2). The sales of such items are subject to tax. 10/6/93.

425.0489 **Ligation Click Applier.** The applier is a reusable instrument utilized to put a clip on blood vessels to connect them. The clip remains in the body.

The applier is a reusable device and excluded from the definition of the term medicine. Tax applies to the sale of this item. However, the "ligation clip" is exempt. 2/10/93.

425.0489.890 **Liquid Castile Soap.** Liquid castile soap used as enema preparation qualifies as medicines. Therefore, tax does not apply to its sale to hospitals for use as enema preparation. 5/17/84.

425.0490 **Liquid Nitrogen and Carbon Dioxide.** Cryotherapeutic agents such as liquid nitrogen and carbon dioxide are considered to be medicines and exempt from sales and use taxes when sold to or by a dermatological practitioner for the treatment of cutaneous skin lesions such as skin malignancies and warts. 4/7/76.

425.0492 **Liquid Nutrition.** Sales of products prescribed for "tube feeders," that is, patients who for one reason or another cannot take food in through the mouth, qualify as medicines when sold or furnished under the conditions set forth in Regulation 1591(a). These products also qualify for exemption as food products under section 6359 and, since the food exemption is easier to obtain (no prescription needed), it is generally not necessary to address whether the products qualify as medicines. 3/31/92; 3/6/97.

425.0492.500 **Lossing Orthopedic Back Trac and Neck Trac.** This device is part of a traction device in which the patient's leg, neck, or back is supported or suspended from a stationary object, such as a bench or the patient's bed frame.

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This device does not qualify as an exempt orthotic device pursuant to Regulation 1591(b)(4) since it does not permit ambulatory movement nor is it fully worn on the body of the user. 11/8/85.

425.0493 Low Air Loss Beds. A low air loss bed is used by long-term bedridden patients who develop decubitis ulcers. Such beds do not qualify as medicines. In fact, hospital beds are specifically excluded from the definition of a medicine under Regulation 1591 (c)(2). 7/23/93. (Am. 2000-2).

425.0494 “Lumex” Chair. The “Lumex” chair is a three-position recliner with specially designed features for all day patient comfort. Attached to the rear legs of the chair are two five-inch ball bearing swivel casters with brakes and attached to the front legs of the chair are two five-inch wheels. The casters and wheels allow for easy maneuverability for transport. The chair can only be operated from the rear by an attendant and the brakes cannot be released by the patient.

The Lumex chair as describe above is not a wheelchair under Regulation 1591. This section describes items that assist their users as they move themselves from one point to another. The Lumex chair is not designed to be operated by the user alone to achieve any significant mobility and does not perform the same function as a wheelchair. A second person, or attendant, is needed before the chair can function as a means of movement from one point to another. The Lumex chair is in the nature of an apparatus, contrivance, device, or other mechanical piece of equipment and, therefore, expressly excluded from the definition of “medicine” pursuant to Regulation 1591. 3/24/86.

425.0494.250 Lympha Press Device. The Lympha Press Device consists of a sleeve or stocking, a cover, and a pneumatic pump. In order to be effective, both the sleeve or stocking and cover must be attached to the pneumatic pump which is a large mechanical device. The term “medicines” includes devices that must be fully worn on the person of the user. The device is not “fully worn” as the pneumatic pump is part of the device. Accordingly, tax applies to the sale of the Lympha Press Device. 3/14/90.

425.0495 Magnevist. This is described as a contrast media for enhancing M.R.I. (magnetic resonance imaging) image of the brain and spine. Magnevist is a clear, colorless to slightly yellow solution which is injected into the patient in doses up to 20 ml. The labels state that Federal law prohibits dispensing the product without a prescription.

Diagnostic products that are intended for use by internal application to the human body in the diagnosis of disease qualify as “medicines”. Magnevist qualifies as a “medicine.” However, to qualify for the exemption, the medicine must also be sold or furnished in accordance with Regulation 1591 (a).

The company, besides selling to doctors and hospitals, also sells the products to clinical laboratories and diagnostic facilities. Sales of prescription medicines to medical facilities which do not admit patients for stays of 24 hours or longer are not covered by the prescription medicines exemption. Clinical laboratories and diagnostic facilities generally do not admit patients for stays of 24 hours or

PRESCRIPTION MEDICINES (Contd.)

longer. As a result, sales to doctors and hospitals are exempt from tax while sales to clinical laboratories and diagnostic centers are not exempt from tax. Whether or not sales of a product are exempt from tax as a prescription medicine depends on both the nature of the product and its use. 11/20/91.

425.0498 **Meadox Cardiovascular Fabrics.** Described as various knits, felts, meshes, pledgets and fabrics which are used to repair an opening or reinforce a closure in the heart or in blood vessels. These items appear to assist and strengthen the heart and blood vessels. When permanently implanted in the human body to assist the function of, the heart and blood vessels, they qualify as prosthetic devices which are exempt from tax when sold or furnished pursuant to Regulation 1591(a). 4/23/92.

425.0500 **Measles Vaccine.** Measles vaccines, administered by a doctor to a large group of persons, are exempt "medicines." The single dosage containers in which the vaccine is sold are exempt under Regulation 1589. 8/26/66.

425.0505 **Medical Devices Used During Heart/Lung Bypass Surgery.** The following medical devices are used by doctors for heart/lung bypass surgery and long-term respiratory support. The devices are single-use, disposable products:

(1) Blood oxygenators and related blood reservoirs. This equipment is used to add oxygen and store the blood while blood is outside the body during open heart bypass surgery.

(2) Cardioplegia delivery system. This system is used to infuse specially formulated solutions, which often include oxygenated blood, directly into the patient's coronary arteries while the heart is stopped during bypass surgery.

(3) Custom tubing packs. These packs contain all the devices used in a heart/lung bypass procedure. The exact contents of each pack are determined by each customer.

Blood oxygenators and reservoirs, the cardioplegia delivery system, and the custom tubing packs are devices, instruments, or appliances excluded from the definition of "medicines" under Regulation 1591(c)(2). Thus, their sales are subject to tax. However, infusion systems may qualify as "medicines" if used as set forth in Regulation 1591(b)(7). 9/16/96.

425.0506 **Medical Dialysis Products.** Tax does not apply to the sale or use of the following items used in connection with a patient receiving hemodialysis.

(1) Stop/Start Kits. These kits contain supplies needed for initiating and discontinuing the hemodialysis procedure. They contain such items as syringes, needles, alcohol wipes, betadine swabs, 4x4's underpads and band-aids.

(2) Carry Pouch for CAPD. The pouch is used by the CAPD patients to carry a bag around their waists between exchanges (treatments).

(3) Beta Cap System. This is a group of supplies used by the CAPD patient when the abdominal catheter is capped and disconnected from the line that transfers the solution into the abdomen.

PRESCRIPTION MEDICINES (Contd.)

(4) Cysto Flo Set “S” Hook. This hook is used by the CAPD patient to hook his solution bag on a door or other object while infusing new solution into the abdomen.

(5) Replacement Parts for the Dialysis Machine. This includes any part necessary for maintenance and repair of the kidney machine. 6/9/83.

425.0508 Medical Gases and Delivery Systems. The medical oxygen delivery system exemption does not apply where direction and control of the equipment never passes to the patient—e.g., the patient merely use the hospital’s system. For equipment to qualify as a medical oxygen delivery system, it must deliver air or oxygen into the breathing systems of the patient. In general, devices that only assist the patient in breathing and do not deliver air or oxygen directly to the patient do not qualify as medical oxygen delivery system. Delivery systems for other medical gases are considered to be appliances for delivering treatment to a patient and are excluded from the term “medicine.”

Anesthetics for internal or external application to the human body are “medicines” since they are preparations for the treatment of disease. Both oxygen, including liquid oxygen, and nitrous oxide are “medicines” when used for internal or external application to the human body. A surgery center is not a health facility as defined in Regulation 1591, but a convalescent home is, with the result that sales of medicines for the treatment of a human being to a nursing or convalescent home are not subject to tax but that sales to surgery centers are subject to tax. 6/17/91.

425.0511.010 Medical Oxygen Delivery Systems. The items listed below are not subject to tax when sold or rented to an individual for the personal use of that individual, as directed by a physician.

(1) Liberator/stroller liquid oxygen system, liberator vessel and portable stroller.

(2) Oxygen Concentrator Unit including any necessary accessories to the unit such as an oxygen mask or tubing.

(3) High pressure oxygen cylinders, “K” or “K” and “E” sizes.

(4) Oxygen regulators to control flow.

(5) Oxygen humidifiers to moisten oxygen vapor.

(6) Oxygen cylinder stands for safety.

(7) Oxygen cylinder carts, for ambulating, with cylinder. 6/3/83.

425.0512 Medical Supplies. A taxpayer requested information regarding the application of tax on the following items.

Wheelchair Accessories and Ambulatory Aids Accessories.

To qualify for exemption under Regulation 1591(k), these items must be sold to an individual for the use of that individual on the direction of a licensed physician.

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Specialty Chairs, Pneumatic Compression Units/Accessories, Alternating Pressure Pads and Pumps, Physical Therapy Miscellaneous.

These items have previously been determined to be excluded from the definition of “medicines”. The sale or use of such items in California is subject to tax.

Total Parenteral Nutrition.

This is a type of liquid nutrition prescribed for tube feeders and is available by prescription of a licensed physician. This item has previously been determined to be a medicine, the sale or use of which, under the conditions set forth in Regulation 1591(a), is exempt from tax. 3/22/93.

425.0513 Medicated Bandages and Medicine Filled Syringes. Although bandages and dressings are not medicines, those which are impregnated with medicinal compounds for the purpose of medicating are medicines. Similarly, syringes are devices not included in the exemption but syringes sold with the injectables inside are exempt as nonreturnable containers pursuant to Regulation 1589(b)(1)(C). 4/30/91.

425.0513.200 Medicated Drape. A medicated drape is applied to the skin prior to making an incision in emergency situations where there is not sufficient time for proper skin preparation. The drape is impregnated with an iodine-based substance which applies an antimicrobial film to the skin. The drape adheres to the skin when applied and the incision is made directly through the drape. Bandages or dressings which are impregnated with medicines are themselves regarded as medicines. The sale or use of the drape is therefore exempt. 3/7/95.

425.0514 Medicated Skin Creams. Medicated skin creams prescribed by a licensed physician and sold by him/her as a part of a skin-treatment program for his/her patients are exempt from tax. (Regulation 1591(a)) 2/19/92.

425.0514.5 Medication Containers. Items used to insert medication into patients are generally regarded as appliances or devices under Regulation 1591(c) (2). Thus their sale is subject to sales tax. However, such items may qualify as “nonreturnable containers” if they are prefilled (e.g. with medication), disposable, and may only be used on one patient. If so, their sale is not taxable when meeting the requirements of Regulation 1589. 3/28/94.

425.0514.800 Medifast 70 and Pro-Call 100. Medifast 70 and Pro-Call 100 are furnished by a medical doctor who maintains a medical weight control practice. These products are furnished to patients for the treatment of obesity. Both products are packaged in powdered form and are mixed with water for consumption. The label for Medifast 70 describes the product as a “modified fasting supplement,” while the label for Pro-Call 100 describes the product as a “Balanced Dietary Food Supplement.” The labels for these products also indicate that these products provide the user with a daily intake of 500 calories or less per five servings. Both products are not sold over the counter but are sold only to physicians.

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Obesity is a disease and substances and preparations intended for internal application to the human body used to treat obesity qualify as medicines. These products are described as products to be ingested to reduce weight. Accordingly, the gross receipts from the physician's sale of these items furnished to his patients for treatment of obesity are not subject to tax. 1/26/89.

425.0517 **Medi Lift Chair.** A Medi Lift Chair is not exempt as a wheelchair, crutch, cane, quad cane or walker since the chair does not perform the same function as these items. It is a lift chair which allows the patient to stand or sit and become mobile as their disease or condition allows and merely facilitates the ability of the user to get into and out of a chair. It can more accurately be described as an article which is in the nature of an apparatus, contrivance, device or other mechanical piece of equipment and therefore expressly excluded from the definition of "medicine" pursuant to Section 6369(b)(2). 1/22/86.

425.0518 **Membrane Oxygenator.** The Membrane Oxygenator, which is part of a larger system used only during surgery, is not a "medicine" under Regulation 1591(c)(2). Its sales are subject to tax. The oxygenator is used to add oxygen to and remove carbon dioxide from the patient's blood solely during surgery. It is used primarily during open-heart surgery procedures, and substitutes for the patient's lungs during the operations. The unit cannot be reused and is discarded after each procedure. While there is no requirement for a prosthesis to be permanently implanted, it must be used for more than the temporary assistance of an organ during surgical procedures. Additionally, for a device to be considered a drainage device, it must operate on its own. If connected to another device, it is related to that device and qualifies for the exemption only if the device does. 2/15/91.

425.0519 **Microfoam Surgical Tape.** This product is tape utilized to hold dressings in place during surgery. It is a "pressure dressing." Since dressings are specifically listed in Regulation 1591(c)(2) as being a device, they are excluded from the definition of medicine. Sales of this item are subject to tax. 11/16/94.

425.0519.800 **Miscellaneous Items.** The following items are not within the definition of "medicine:" Electrode jelly, spray-on bandage, instant ice bag, silver nitrate/potassium nitrate application stick. 7/14/78.

425.0520 **Miscellaneous Medical Supplies.** Disposable trays, cast materials, rib belts, elastic bandages, and plastic splints are not included within the definition of medicine. 6/26/64.

425.0521 **Miscellaneous Medical Devices.** Grasping forceps, ERCP catheters, stricture measuring catheters, Cunningham-Cotton sleeves, biliary stent sets, combined procedure sets, nasal biliary and pancreatic drainage sets, liquory catheters, stent retrievers, wire guides, papillotomes/sphincter otomes, extraction devices, needles/injections, dilation devices, snares and active cords, Savary-Gilliard dilators and cytology devices are used temporarily during surgery or other treatment and are not "medicines."

PRESCRIPTION MEDICINES (Contd.)

Esophageal prostheses which replace or assist the natural function of the esophagus and which remain in the body are “medicines.” Colonoscopy devices which are used to administer treatment to the patient are not “medicines” unless they remain in the body for a period of six months or longer. Similarly, gastrostomy devices are not “medicines” if used for percutaneous feeding. However, if they remain in the body for a period of six months or longer, they are regarded as “medicines.” 2/24/95.

425.0522 Miscellaneous Items. Summarized below is the application of tax to the sales of the following items by a licensed pharmacist pursuant to a prescription by a doctor. In some cases a prescription is not required as noted.

Alcohol, Isopropyl	exempt
Aspirator, nasal	taxable
Bandages, dressings, & gauzes (nonmedicated)	taxable; generally exempt if for ostomy patient
Sanitary napkin/tampon type	taxable
Bandages, dressings, and gauzes (medicated)	exempt
Breast pump	taxable
Catheters, external male, intermittent suction	nonspecific suction catheters are external and generally taxable. External male and intermittent catheters when used post-surgically for purposes of urinary drainage through either a natural or artificial opening are exempt.
Condoms	taxable
Contraceptive creams, foams, jellies, and suppositories	exempt
Diabetic test supplies: reagent strips, tablets, tape, lancets, etc.	taxable
Diaphragms	taxable
Feeding tube	taxable
Fountain syringe, general use	taxable
Disposable gloves	taxable
Hearing aid batteries	generally taxable; exempt if dispensed by a hearing aid dispenser licensed by the Board of Medical Quality Assurance (tax is due on the sale to licensed hearing aid dispensers)
Hot water bottle	taxable
Hypodermic needles, general use	taxable

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Hypodermic syringes, general use	taxable
Incontinence supplies: disposable briefs, diapers (adult and infant), pads, shields, underpads for beds, pant systems including reusable briefs and liners.	taxable
Incontinence supplies: skin care creams and washes	exempt
Intravenous solutions administration set	taxable if indicated that billed lumpsum
Invalid cushions, not fully worn on the body	taxable
Lubricating jelly	exempt
Nebulizer, bulb type	taxable
Ostomy supplies: adhesives, adhesive removers, colostomy, fistula and ileostomy bags, urostomy bags, skin protectives, peristomal coverings, skin care creams and washes, tubes, clamps, connectors, tracheostomy supplies	exempt, prescription not necessary for ostomy patient
Sheeting, waterproof	taxable
Suspensory (athletic supporter)	exempt, orthotic device
Swabsticks, saturated	exempt
Syringe, bulb types (general use)	taxable
Syringe, hypodermic (insulin): disposable and reusable with and without needles, various capacities	exempt
Syringe, irrigation	taxable
Thermometers	taxable
Urinary drainage/irrigation supplies: Urinary drainage collection units—leg bags	exempt if fully worn on the body
Tubes, clamps, connectors	exempt if fully worn on the body
Vaporizer	taxable. 3/3/95.

425.0530 Miscellaneous Medical Supplies. Blood tubing sets, cannula systems, declotting trays, declotting catheter sets, declotting aspirators, and accessories and instrumentation are not considered prosthetic devices and tax would apply to their sale. Where “cannula systems” are implanted in the human body, they are tax exempt. 12/7/77.

PRESCRIPTION MEDICINES (Contd.)

425.0531 **Miscellaneous Supplies.** The following items are included in the definition of “medicines” under Regulation 1591.

- (1) Dressings impregnated with medicines.
- (2) Surgical fabric that remains in and is absorbed by the body.
- (3) Skin care. Incontinence products are exempt only if the use of the product is made necessary due to an ostomy operation. 10/6/93.

425.0540 **Mouthwash/Gargle—Betadine.** This product is an aromatic mouth freshener which may be used as a refreshing mouth rinse and to help provide soothing temporary relief of dryness and minor irritations of the mouth and throat. This mouthwash/gargle is to freshen breath and is generally recognized as a cosmetic preparation. Its purpose is not to diagnose, cure treat, mitigate or prevent disease and therefore it does not fit the definition of “medicines” under Regulation 1591(b). 3/7/91.

425.0542 **Multicom 500, Lympha Press Mini.** These systems share similar characteristics. The patient wears a sleeve or legging which is attached to a pump by a series of hoses. The pump sits on a table or stand and applies pressure gradient therapy to relieve the edema. These systems do not qualify as “orthoses” under Regulation 1591(b)(4) because they are not fully worn on the body by the patient. Sales of these devices are subject to tax. 12/28/93.

425.0544 **Nasal Splints.** Soft-Form External Thermo Plastic Splint and Soft-Form External Aluminum Nasal Splint are external splint/dressings used following surgery and removed 7–10 days after surgery. They are not implanted. Bivalve and Custom-Cut Splints are put in the nose temporarily after rhinoplasties to keep the air passages open. They are also removed after 7–10 days and are not permanent. These splints immobilize the nose area to permit healing and do not otherwise support the body structure. Splints are one of the items listed in Regulation 1591 as being devices, appliances, etc., excluded from the definition of “medicine.” Therefore, sales of these items are subject to tax. 06/05/96.

425.0545 **Neorological Refill Kit.** This refill kit is sold to and used by health care personnel to refill a drug (drug not included) into a Drug Administrative Device. The care center then bills the patients separately for the refill kits. The centers are consuming the product in the course of providing a service. Even though the refill kit is billed separately to the patient, possession, dominion, and control of it never passes to the patient. Thus, the sale of these kits to the centers are at retail and are not sales for resale. The sales to centers are subject to sales or use tax. 7/29/96.

425.0546 **Neuromuscular Electrical Stimulators.** Respond II units are used for rehabilitation of muscle groups on multiple sites and can assist in the reduction of post-traumatic edema and muscle spasm.

When fully worn on the body, the Respond II qualifies as a prosthetic device under Regulation 1591 (b)(5) and is classified as a medicine. A prosthetic device which is obviously designed to be used while being worn on the body of the user

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qualifies for the exemption even though it may, at the convenience of a particular user, be set on a table or a bed while the user is undergoing therapy. 5/17/91.

425.0547.300 Nonadhering Dressings and Packing Strips. Adaptic nonadhering dressing and nonadhering packing strips are surgical dressings impregnated with a specially formulated petroleum emulsion to permit rapid wicking of wound exudates through the dressing. This petroleum emulsion is not a substance or preparation intended for use by external application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and therefore is not within the definition of medicine under Regulation 1591. Rather, the material seems intended only to impart certain characteristics to the dressing itself. 5/30/75.

425.0547.400 Noninvasive Temporary Pacemakers. The Noninvasive Temporary Pacemaker (NTP) is a self-contained cardiac pacing device weighing approximately 18 pounds which delivers an electric pulse to the heart via two specially designed electrodes. It is the size of a small portable television and measures 6"Hx12"Wx15"D. In addition to serving as a pacemaker, it is also a "portable"/moveable ECG machine and contains a recorder for monitoring cardiac response. The NTP is not fully worn on the person of the user but is attached by means of electrodes.

The NTP was designed to be moveable so that it would remain with the patient. However, it was not designed to be worn on the patient. As such, this product does not qualify as an exempt prescription medicine. 12/6/89.

425.0548 Nutri-15 Plus. This product is produced in powdered form and described on the label as a portion supplement and may also be used for weight loss. Thus, it is excluded from the definition of "food products" under Regulation 1602(a)(5). 11/18/92.

425.0560 Opaques—"Radiopaques." The following are considered "medicines":

Barium Sulfate	Conray Angio Solution,	Microtrast
Barium Sulfate Redi-Flow	60%	Mulsopaque
Baridol, Powder	Cystokon, 30%	Neo-Cholex
Baridol, Gastric, Liquid	Dionosil	Neo-Cholex, Powder
Baroloid	Esophotrast	Pantopaque
Barosdense	Ethiodol	Rugar
Barosperse	Gastriloid	Renografin
Barotrast	Gastrografen	Salpix
Basolac	Gastropaque	Telepaque
Bilevac	Intropaque	Ultrapaque
Cholex	Lipiodol	Visciodol
Cholografin Meglumine	Liposperse	Borden's X-Neg
Conray Angio Solution,	Modopaque	X-Prep
80%	Micropaquette	

Any radiopaque used in the diagnosis, cure, mitigation, treatment or prevention of a disease is considered medicine. 11/4/69.

PRESCRIPTION MEDICINES (Contd.)

425.0580 **Opaques and Dyes.** Opaques and dyes used by hospitals and doctors in examination of patients are given internally to the patients and facilitate the taking of diagnostic x-ray photographs. Since such opaques and dyes are intended for use by internal application to the human body in diagnosis of disease they qualify as medicines under Section 6369 of the Revenue and Taxation Code. 9/1/65.

425.0590 **Optifast 70 & Optifast 800.** Optifast 70 and Optifast 800 are used as a total meal replacement in connection with a weight loss program. Patients participating in the weight loss program are medically supervised by a physician. Optifast products are available by prescription only and are not available to the general public. Even though Optifast 70 and Optifast 800 do not qualify as “complete dietary foods” under Regulation 1591(b)(1). Accordingly, because these products must be furnished to patient by physicians pursuant to a medically supervised program for treatment of obesity, they are nontaxable under Regulation 1591(a)(2). 3/16/92.

425.0600 **Oral Contraceptives.** Liquid, pill, tablet, and capsule preparations used as oral contraceptives are within the definition of medicines when sold in drugstores on prescriptions of physicians or when dispensed in hospitals under the direction of physicians. 7/20/64.

425.0602 **Oral Screw.** An oral screw used in conjunction with a mouth gag is taxable. 5/2/80.

425.0607 **Origin Tacker System.** The Origin Tacker is an endoscopic stapling system designed to permit stapling or fixation of tissue and prosthetic mesh during surgical procedures. The system consists of a limited reuse handle and disposable delivery tubes which hold the tacks used in fixation of the tissue and or prosthetic mesh. The tacks are implanted into the body as a permanent implant.

The tacks qualify as sutures under Regulation 1591. As a result, the sale of the tacks are exempt from tax. The tubular delivery system is not shipped preloaded. Also, the handle is reusable. Therefore, the delivery system and the handle are instruments excluded from the definition of “medicine” under Regulation 1591 with the result that their sales are taxable. 6/5/96.

425.0615 **Orthoderm Convertible and Orthodum CAT Bed.** The Orthoderm Convertible is described as a truly portable low air loss system that replaces any conventional mattress on any conventional hospital bed.

The Orthoderm CAT Bed is pictured as an adjustable hospital bed. The flyer describing it states, in part “The CAT Bed is adaptable for full-body skeletal traction to service the needs of trauma or orthopedic patients.”

Hospital beds, including traction beds, are appliances excluded from the definition of “prescription medicines.” Therefore, sales of these items are subject to tax. 1/18/91; 7/3/91.

425.0615.350 **Orthotic Devices.** The following items qualify as exempt orthotic devices when sold to a physician for treatment of a patient or sold directly to a patient pursuant to a doctor’s order or prescription:

PRESCRIPTION MEDICINES (Contd.)

Dricast Orthopedics

Miracle Knee Supports—TH109, TH209, TH309, TH409, TH509, TH609

Neoprene and Felt Buttress Pads—TH190, TH191

Stabilizer Brace—TH192

Brace Hinge w/hyperextension stop TH193 B

Interior Patellar Pull Component—TH193 B

Lateral Release Pad—TH195

Lumbro—Sacral Back Supports—TH101, TH201, TH301

Rib Belt—TH401

Abdominal Support—TH501

Thigh Calf Support—TH104

Magic Wrist Support—TH107

Ankle Elbow Support—TH108 A&B

Tennis Elbow Support—TH108 C

Wonder Straps—TH197—Exempt if sold as part of a support item.

Pressure Dots—TH198—Exempt if sold as part of a support item.

Flexible Ice Inserts—FI4—Exempt if sold as part of a support item.

Ezy Wrap (Professional Product Inc.)

840 Ankle Brace

Arm Sling—#2341

Velcro Elastic Bandage's—#4792

Wrist/Forearm Supports—#901, 903, 905, 907

Thumb/Finger Splints—#2552

Hinged Knee Brace—#1267

MediUSA

Genumedi—Elastic Knee Support

Levamedi—Elastic Ankle Support

Epicomed—Elastic Elbow Support

OMNI Scientific

OMNI II Bi-Lateral Knee Support

Anderson Knee Stable Knee Brace

OS-5 Off—The Shelf Custom Knee Brace

TS-7—Custom Knee Brace

Orthoglass

Orthoglass Fiberglass Splinting (Casting) Material

Orthoglass Elastic Bondage

Swede—O Padded Ankle Support

PRESCRIPTION MEDICINES (Contd.)

The following items do not qualify as exempt orthotic devices:

Orthopedic Product Sales
Healers Heel Silicone Support
Kool Kubes
Kool Kube Ice Cubes and Mats
Orthoglass
Fishers Razor—Edge Scissors
Parker Medical Support
UCO 4PF Heal Bed Foot Orthotic System
UCO Pre-Molded Foot Orthotics
Chattanooga Corporation
Viscolas Foot Orthotics
Full-Cushion Insoles
Heel Cushions
Heel Spear Cushions
Metatarsal Pads
Longitudinal Arch Pads
Corrective Heel Wedges
Neuroma Pads
Toe Crest Pads
Viscolas Hand Exerciser
Viscolas Waffle Pattern Fabric. 6/1/90.

425.0618 **Other Supplies.** The term “other supplies” in Regulation 1503 (b)(2) includes property for which the hospital has made a separate charge to the patient, provided title or possession of the property passes to the patient. It does not include consumable supplies which are consumed by the hospital in rendering its services. Property constitutes consumable supplies when title or possession of the property does not pass to the patient. Hospitals are the consumers of such property even when a separate charge is made for these consumable items. 4/15/94.

425.0619 **OvuSTICK Self Test.** The OvuSTICK Self Test is an in-home diagnostic kit that is a simple urine test to aid the user in predicting the time of ovulation. This test kit is not used to diagnose, cure, mitigate, treat or prevent a disease and, therefore, is not a “medicine” as defined in Regulation 1591(b)(1). Sales of “OvuSTICK” to consumers are subject to tax. 4/15/86.

425.0620 **Oxygen.** Medical oxygen and other gases sold to hospitals for treatment of human beings are exempt. 12/3/63.

425.0640 **Oxygen.** Medical oxygen sold by a medical supply house to an individual who uses the oxygen under a doctor’s prescription is “furnished by a physician to his own patient for treatment of the patient.”

PRESCRIPTION MEDICINES (Contd.)

A sale of medical oxygen to State-aided individuals under the “Casey Bill” (i.e., the retailer bills the California Physicians Service which acts as fiscal agent for the State) is regarded as a sale of medicine to this State for use in treatment of human beings within the meaning of Section 6369. 7/18/66.

425.0660 **Oxygen.** Oxygen sold to an individual for use in treating a human being pursuant to a doctor’s prescription is regarded as a “medicine” furnished by a licensed physician to his own patient for treatment of the patient. Accordingly, sales of oxygen for such purpose by distributor’s of compressed gases are exempt from sales tax under Section 6369. The exemption is not limited to sales of oxygen by medical supply houses. 9/8/67.

425.0680 **Oxygen.** Sales of oxygen to municipal fire departments are exempt. 1/28/69.

425.0683 **Oxygen Concentrators.** An oxygen concentrator is a device that concentrates oxygen by pumping air through a separating unit containing a unique sieve material. This sieve retains the oxygen content of the air and permits the oxygen to be separated and concentrated into a reservoir for breathing by the patient. The oxygen flows through a meter dosing device and is delivered to the patient via nasal cannulae. Nearly pure oxygen is produced (ninety two percent at 2 liters, for example). The components of an oxygen concentrator consist of oxygen tanks, regulators, humidifiers, cannulae, masks, oxygen stands, oxygen carts, and tubing. Each of the above items constitutes a part of the medical oxygen delivery system and is exempt when sold, leased, or rented to an individual for the personal use of that individual as directed by a physician as set forth under Regulation 1591(m). 3/9/83.

425.0686 **Oxygen Delivery Systems Sold to Health Care Providers.** Sales of medical oxygen delivery systems are exempt only when they are sold to an individual for his or her own use under the direction of a licensed physician. The exemption does not apply to sales to hospitals, physicians, or dentists for use on their premises. 11/7/94.

425.0690 **Oxygen Storage Tank.** Rental of a medical oxygen storage tank to a hospital is exempt from tax when the tank is then sold, leased, or rented to an individual for the personal use of that individual as directed by a physician. However, to qualify for this exemption, the transaction between the hospital and the individual must constitute an actual sale, lease, or rental.

Where the patient’s use of the storage tanks is limited to the hospital’s premises, the direction and control of the equipment never transfers to the patient. Accordingly, there can be no lease or rental of the storage tank to the patient under these conditions. Therefore, the medical oxygen delivery systems exemption under Sales and Use Tax Regulation 1591(m) would not apply to the rental of storage tank to the hospital. 4/8/91.

425.0695 **Parts for Wheelchair Lifts.** A government transportation district, which purchases and maintains wheelchair lifts for transporting handicapped

PRESCRIPTION MEDICINES (Contd.)

people on its buses, requested information as to whether the district's purchases of parts to maintain the lifts are exempt from sales or use tax.

While the statute does not expressly refer to repairs, both the statute and the regulation exempt the purchase of "items and materials when used" to modify a bus or van. The language is broad enough to cover repairs since repair parts are "items and materials" and once installed are used to modify the vehicle for transportation of physically handicapped persons. 12/05/91.

425.0695.300 Passy-Muir Trach Valve. The Passy-Muir Trach Valve is a prescription device which attaches to a tracheotomy tube to temporarily block the passage of air to the lungs, allowing tracheotomy patients to speak. The Passy-Muir Trach Valve is sold only to medical facilities and physicians.

The Passy-Muir Trach Valve qualifies as "related supplies" for the reason that it is designed to be worn in conjunction with a tracheotomy tube which is necessary as a result of an artificial opening created in the human body for the elimination of natural waste. Therefore, sales tax does not apply to the sale of the Passy-Muir Trach Valve. 9/18/85.

425.0695.875 Pedialyte. Sales of Pedialyte are nontaxable. 5/29/96.

425.0696 Pediatric Urinary Specimen Container. A pediatric urinary specimen container is a plastic bag which is attached by an adhesive to an infant for direct collection of urine. It is used to obtain an infant's urine sample for test purposes. The bags are not prosthetic or orthotic devices. They are neither worn on the person nor do they assist the body in a natural function. The sale or use of them is not exempt. 4/3/95.

425.0697 Pelvic and Cervical Traction Devices. Traction devices must be designed to be fully worn on the body of the patient to qualify as an exempt orthosis under Regulation 1591(b)(4). Those pelvic and cervical traction devices which qualify as "medicines" are devices such as cervical collars which are fully worn on the body of the patient.

Devices which are attached to the bed, and the patient is then strapped to the device, are considered stationary devices and do not qualify as medicines. Therefore, their sales are subject to tax. 10/22/91.

425.0699 Pharmaceutical Products. Certain pharmaceutical products are outside the prescription drug classification, but they are products sold by licensed dermatologists to their patients specifically for the treatment of skin disorders or the prevention of adverse skin conditions. The following pharmaceutical products which treat skin disorders or prevent adverse skin conditions are considered to be medicines. Accordingly, a dermatologist's gross receipts from the sale of these products to patients for the treatment of those patients are exempt from tax:

Skin Cleaners and Antiseptics

Nu-Soap Lotion (Cetaphil)

Chlorhexidine Gluconate 4% Cleanser (Hibiclens)

PRESCRIPTION MEDICINES (Contd.)

Antipsoriaties

Coal Tar Solution 20% USP

Psorigel Solution

Antibiotics

Neomycin, Polymyxin Bacitracin Ointment (Neosporin)

Antiseborrheic

Selenium Sulfide Lotion Shampoo 1% (Selsun Blue)

Antiviral

Zostrix Cream 0.025%

Emollients

Therapeutic Bath Oil (Alpha Keri)

Lubriderm Lotion (unscented)

Eucerin Cream

Aquacare/HP Cream

Lacticare Lotion

Minon Moisturizer

Keratolytics

Salicylic Acid 40% Plaster

Sunscreen

Neutrogena paba free

Ti-Screen SPF 30. 7/1/88.

425.0700 **Phisohex.** The sale of Phisohex to a political subdivision of this State for use in the treatment of a human being qualifies as a medicine and, accordingly, is exempt from tax. 7/11/68; 16/68.

425.0710 **Pig Skin.** Pig skin, called porcine skin, used as a temporary dressing on persons suffering burns is not tax exempt since it does not meet the definitions of "medicines" as stated in Regulation 1591. 1/24/75.

425.0713 **Pill Containers.** Pill containers are sold by the hospital when prescription medicine is placed therein when filling an out-patient prescription. However, when prescription medicine is placed in a container for an in-patient, the medical staff retains complete control and the container is being used in hospital operations. When the medicine is sold to the in-patient, it is sold by the dose. Accordingly, the sale takes place at the time of administration and the container is used by the hospital.

Although in some cases the remainder of the prescription may be delivered to the patient upon release from the hospital, the container has been "used" by the hospital and a tax paid purchases resold deduction is not available. 11/24/76.

PRESCRIPTION MEDICINES (Contd.)

425.0720 **Pollen Extract** furnished to patients by a doctor, administered by the doctor, and included in his charge for services, (not separately stated) is consumed rather than sold by the doctor. Where, however, the doctor furnishes the extract but does not administer the same to patient, he makes a sale and the tax applies to his receipts. 11/5/53.

425.0723 **Porcine Grafts.** Although porcine grafts may, to some extent, facilitate skin growth, their primary purpose is as a temporary biological dressing on burn patients. As such, they do not qualify as exempt prosthetic devices and tax applies to their sales. 10/2/89.

425.0724 **Port-A-Cath.** The Port-A-Cath is described as consisting of two-to-three components which are implanted in the body; they are the portal, the catheter and, depending on the model, a catheter connector. A huber, noncoving needle is used to access the port. The Port-A-Cath is permanently implanted into the body to maintain venous access. Without this system, the patient may suffer from collapsed veins making it impossible to receive any medication which would normally be injected into the vein. The brochure also describes the Port-A-Cath as a totally implantable device designed to permit repeated access to the venous circulation. The brochure also states the use of the product is indicated when a patient requires repeated venous access for injection or infusion therapy and/or blood sampling. The Port-A-Cath is sold primarily for the purpose of chemotherapy infusion.

To be considered as a “medicine”, the prescription sales of which are exempt from sales tax, the item must be sold for the purpose of replacing or assisting the functioning of a natural part of the human body. The purpose of the Port-A-Cath is to provide venous access when repeated injections are prescribed. The natural function of the vein remains the maintenance of blood flow. Delivery of the chemotherapy agent into the vein may facilitate rapid dispersal of the vesicant drug, but rapid dispersal of drugs is not the vein’s natural function. Sales of the Port-A-Cath system for drug infusion purposes are not exempt from tax. 6/12/89; 12/14/90; 2/20/91; 4/26/91.

425.0725 **Posey Vests.** Posey vests are worn by patients to prevent or mitigate initial or additional injury. Since they are worn to prevent injury and do not support the body structure nor replace or assist the natural function of a human body part, they do not qualify under the definition of “medicines”. 6/16/93.

425.0726 **Post-Op Cryotherapy Product.** This product is used to apply heat or cold therapy to the body. Such products are devices or appliances and are excluded from the definition of “medicines” under Regulation 1591(c)(2). 7/29/96.

425.0727 **Posture Chair.** The Congleton Neutral Posture Chair is a patented, posture support system recognized for its therapeutic value in reducing pain and speeding the recovery/return to work for its users.

The Congleton Neutral Posture Chair is an apparatus, contrivance, and/or appliance used for supportive purposes and accordingly is not a “medicine” as

PRESCRIPTION MEDICINES (Contd.)

defined in section 6369. Consequently sales tax applies to the sales of the Congleton Neutral Posture Chair. 4/5/88.

425.0730 **Preps.** Idophor preps which is a medicated pad or wipe applied to a patient's body qualifies as a "medicine". 5/17/89.

425.0740 **Pressure Garments.** Pressure garments for burn and skin graft medical patients qualify as exempt orthotic devices under Revenue and Taxation Code Section 6369(c)(3). As such, sales of pressure garments to hospitals for resale to patients are exempt from tax. In addition, sales made directly to patients are exempt from tax if they are furnished pursuant to a written order by a licensed physician. 8/10/90.

425.0741 **Products Regarded as Exempt Medicines.** The following is a categorization of items sold to a hospital.

The following items are classified as taxable nonmedicines within the definition of Revenue and Taxation Code section 6369 when sold to a hospital:

Taxable "Nonmedicines"

Arch supports
Auditory devices
Bacteriological culture medium
Bandages (other than those used for ostomy patients)
Bed pads
Bed traction units
Blood pressure kits
Cervical pillows
Contrivances
Compresses
Dental prosthetic devices and appliances
Distilled water use for drinking
Electronic equipment
Electrocardiographs, metabulators and related accessories
Exercise weights
Foot orthoses
Hospital needles
Hypodermic needles
Instruments
Intravenous equipment and tubing
Mechanical equipment
Microlet devices
Mucolytic reagents for vitra testing
Nonmedicated dressings (other than those used for ostomy patients)

PRESCRIPTION MEDICINES (Contd.)

Ocular devices or appliances
Ophthalmic devices or appliances
Orthodontic Devices and Appliances
Orthopedic shoes and supportive devices for the foot
Physical equipment
Plastazote shoes
Pollen extract
Seven-Up and other carbonated drinks
Space blankets
Spinal anesthetic trays
Splints (not otherwise qualifying as orthotic devices for exempt foot splints are taxable)
Stethoscopes
Syringes
Thermometers
Traction units (other than those fully worn on the patient)
Uroscreen
Water conditioning systems

The following items are classified as exempt medicines within the definition of Revenue and Taxation Code section 6369 when sold to a hospital:

Abduction pillows
Alcohol (Ethyl)
Anesthetic gases
Artificial kidney dialysis machines and supplies
Artificial limbs or replacements
Baby oil
Baby powder
Blood plasma
Bone screws
Cast materials
Colostomy bags and supplies
Contraceptive pills, creams, liquids, tablets, and capsule preparations
Corsets
Diaparene powder
Distilled water, sterile nonpyrogenic and Sterile pyrogenic (specially processed)
Dyes given internally for x-ray diagnosis
Elastic bandages
Enema preparations in disposable container

PRESCRIPTION MEDICINES (Contd.)

Evacuators (post operative)
Glucose and substances used for tolerance tests
Humidification kits
Immobilizers
Influenza vaccine
Insulin
Intrauterine contraceptive devices
Intravenous solutions
Lubricating jelly
Mammary prostheses
Measles vaccine
Medicated dressings
Opagues given internally for diagnostic x-ray photography
Orthotic devices
Oxygen
Pacemakers
Phisohex—for patients' treatment
Prosthetic devices
Radiopaques
Rib Belts
Rubbing alcohol
Sabin oral polio vaccine
Slings
Splints, plastic or other
Stump shrinkers
Stump socks
Support hose
Supports
Surgical cellulose hemostats
Sutures
Tracheostomy tubes (post-operative)
Transcutaneous nerve stimulators (only if fully worn on or in the body of the user)
Trusses
Vaccines
Vitamins for treatment of human being
Walking heels. 9/20/85.

425.0743 **Prosorba Used in Hemodialysis.** Prosorba is used in a process called immunoadsorption which removes specific molecules from the blood of human

PRESCRIPTION MEDICINES (Contd.)

beings. The substances are normally excreted in urine. In the usual process, blood is circulated from a vein in an arm of a patient through a tube to an apheresis machine which separates blood cells from blood plasma. The cells are immediately returned to the patient's body through another tube attached to a needle in the other arm. The plasma flows from the machine through another tube into Prosorba. The undesired molecules are absorbed by the Prosorba and the purified plasma flows through another tube back to the blood cell tube. This process can be used for kidney dialysis, a type of hemodialysis, but it can also be used for other types of hemodialysis. The Prosorba and equipment related to its use are exempt as hemodialysis products pursuant to section 6369.1. 3/15/94.

425.0744 Prosthesis Consisting of Several Inter-Dependent Components. A prosthesis consisting of several inter-dependent components is considered to be one item. All the components of this system must be worn on the person of the patient in order for the sale of the system to be exempt from tax under Regulation 1591(b)(5). 3/6/91.

425.0745 Prosthetics and Orthotics. To qualify for the exemption, these items must be capable of being fully worn on the patient. Such items must be implanted for a long term. Devices implanted for temporary use during surgery do not qualify for the exemption. 3/31/92.

425.0750 Pulmo-Aides. A Pulmo-Aide is basically an air compressor. It is sold to patients under prescription to break up medication into aerosol (mist) form so it can be carried to the patient's lungs.

This device does not qualify as an oxygen delivery system nor a part of such a system under Section 6369.5. Also it does not qualify as an exempt prescription medicine under Section 6369(b)(2) which excludes apparatus, contrivances, appliances, and devices. Accordingly, tax applies to the sale of this product. 11/15/90.

425.0765 Radioactive Application Equipment. The radioactive items, such as miniaturized cavitary cesium-137 sources for radiotherapy afterloading devices, eye therapy system using strontium-90 and cesium-137 tube sources, do not constitute medicines but are devices or physical equipment and hence taxable. 9/2/77.

425.0770 Radioactive Pellets. Radioactive Pellets even though leased, qualify as an exempt medicine. 11/30/76.

425.0771 Radionuclide Generators. Radionuclide generators produce radioactive materials which can be administered to the patient by ingestion or injection for the purpose of diagnostic imaging. While the products of the generator may be classified as prescription medicines under proper conditions, the generator itself is nothing more than a piece of equipment and it is not within the definition of "medicine" for sales and use tax purposes. 3/14/94.

425.0772 Radiopharmaceuticals. Sales of radiopharmaceuticals are medicines and exempt from tax if they are sold to a health facility as defined in Regulation 1591(g) for internal or external application to the patient for use in a nuclear imaging diagnostic procedure. 11/9/92.

PRESCRIPTION MEDICINES (Contd.)

425.0773 **Reagents.** When a person is ill, a sample of cells, tissues or organ is removed from the body and tests are performed on the body sample. Diagnostic substances (reagents) are applied to the sample taken from the patient's body to assist in diagnosing the disease.

Since reagents are not applied internally or externally to the body of the patient, they do not come within the definition of medicines contained in Regulation 1591(b)(1). Accordingly they are subject to tax. 1/11/93.

425.0774 **Renting Medical Ventilators to Hospitals.** A lessor rents ventilators to hospitals, usually on an hourly or daily basis. The lessor only rents to hospitals because the expertise of a respiratory therapist is needed to correctly operate the equipment. The hospitals use the ventilators for patients who need assistance to breathe. Possession or control of the equipment is not passed to the hospital's patients since the ventilators are too complicated to be operated by anyone but a trained respiratory therapist.

The hospital is not considered to be sub-leasing or reselling the ventilator to the patient merely because it bills the patient for use. The equipment is being used by the hospital in providing a service. Also, this transaction does not qualify for exemption under section 6369.5 since it must be rented to an individual, not to a hospital, in order to qualify for the exemption. Accordingly, the rental charges to the hospital are subject to tax. 3/11/92.

425.0775 **Res-O-Mat and Ria-Mat Kits.** Res-O-Mat and Ria-Mat kits are diagnostic systems which are used to analyze blood samples in the laboratory. Tax applies to their sale or use even if they are prescribed by a physician because they are used in the laboratory and not by application to the human body. The application of substances to blood samples is not application to the human body. 3/2/79.

425.0780 **Rubbing Alcohol** qualifies as a medicine under Regulation 1591. 2/26/64.

425.0800 **Sabin Oral Polio Vaccine.** The prescription medicine exemption includes the Sabin oral vaccine dispensed at clinics. The contributions or donations which the recipients make upon receipt of the vaccine may be regarded as payment and the presence of a licensed physician in charge of the clinic fulfills the statutory exemption requirement that it be supplied by a physician. 9/27/62.

425.0810 **Scrub Brushes.** Sales of scrub brushes impregnated with a preparation recognized as a medicine are "medicines" when used by physicians to scrub prior to surgery. 5/28/92.

425.0815 **Semi-Floater—Silicore.** This item is described as used during "any cardiac emergency where temporary external pacemaking is needed." When used as a temporary assist during a surgical procedure or operation, for either treatment or testing, it is taxable. 1/28/91.

425.0820 **Seven-Up Beverages Given to Hospital Patients.** Although Seven-Up, a beverage, is given by a hospital to certain patients pursuant to a physician's

PRESCRIPTION MEDICINES (Contd.)

directions, it does not qualify as medicine under Section 6369, inasmuch as it is not commonly recognized as a prescription intended for use in the treatment or prevention of disease. 12/2/66.

425.0821 Ship's Medical Personnel and Sick Bay. Federal and international law does not require that a licensed physician and surgeon be carried on each voyage for vessels with less than thirty or forty persons aboard. The master or first mate of the ship who is specifically schooled in the dispensing of drugs for the need of the ship's crew acts as the physician and pharmacist on the ship. The master or first mate of the ship is not a "licensed" physician nor a "registered" pharmacist within the meaning of the "licensed" physician or "registered" pharmacist used in Regulation 1591.

A sick bay aboard a vessel is not a qualifying health facility unless it is within such meaning as set forth under Regulation 1591(g). This section provides that the term health facility has the meaning provided by Health and Safety 1250. Such facilities as defined therein are required to be licensed and regulated by the State of California. 5/20/81; 5/20/96.

425.0821.935 Silicone Drain. Silicone drain used to drain waste as a result of an artificial opening created in the human body, as required under Regulation 1591(j), qualifies as a medicine and is not subject to tax when used post surgically. 5/17/84.

425.0822 Silicone Flat Drain 10mm, CWT Reservoir 15cc, Silicone Flat Drain.

These items are used for post operative drainage of an incision site and are subsequently removed. Assuming that the bodily fluids drain into the reservoir, these items qualify as "appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste", the sale of which are exempt from tax when sold or furnished pursuant to Regulation 1591(a). 4/23/92.

425.0822.350 Simplate Products. Simplate Products are sterile, disposable devices that are used to make uniform incisions for bleeding time tests. The spring-loaded blades are contained in a convenient, easy to use plastic housing. When triggered on the forearm, a Simplate is designed to provide one or two incisions. The device is available in four configurations:

 Simplat with a single blade

 Simplat II with dual blades

 Simplat R with a single retractable blade

 Simplat II R with dual retractable blades

The Simplate products are in the nature of instruments, apparatus, contrivances, appliances, and devices which are specifically excluded from the definition of the term medicine. Therefore, the Simplate products do not qualify as exempt medicines. 5/10/90.

425.0822.750 Skiing Systems. The 'Arroya' downhill skiing system consists of a maneuverable sled sold with a special strap system that secures the skier to the

PRESCRIPTION MEDICINES (Contd.)

sled. It is designed to let disabled persons ski. None of the exemptions in Regulation 1591(b) cover this type of item. Accordingly, sales of 'Arroya' downhill skiing systems are subject to tax. 11/29/83.

425.0823 **Skin Closures.** Adhesive skin closures are not sutures and do not fall within the definition of "medicines". They would qualify as medicines if such adhesives are permanently implanted in the body and are absorbed by it. 5/28/93.

425.0823.100 **Skin Creams and Lotions.** The following products which are used for cleansing and otherwise caring for the skin of patients, protecting and otherwise treating skin disorders or preventing adverse skin conditions are considered to be "medicines:"

- (1) PVP Iodine Prep Solution and Scrub Solution
- (2) Acu-dyne ointment
- (3) Eucerine Skin Lotion
- (4) Cream Skin Care. 5/28/92.

425.0823.5 **Skin Products.** The sale of the following products by a dermatologist to patients, for the treatment of skin disorders, is exempt from tax pursuant to Revenue and Taxation Code section 6369(a)(2). However, when sold over-the-counter, the sale of these products is subject to tax.

Lynda—Sy Cleansing Lotion

Lynda—Sy Facial Soap

Lynda—Sy Moisture Lotion for Normal/Combination Skin

Lynda—Sy Moisture Lotion for Dry Skin

Lynda—Sy Superior Cream

Lynda—Sy Extra Rich Face Cream

Lynda—Sy Optimal Sunscreen Moisturizing Lotion

Lynda—Sy Optimal II Sunscreen Lotion for Oily Skin

Lynda—Sy Liquid Make-up with Sunscreen

Lynda—Sy Soufflé Make-up with Sunscreen

Lynda—Sy Essential Make-up with Sunscreen

Lynda—Sy After Shower Body Oil 10/27/89.

425.0825 **Sofnet Cleaner and Chix Cleansers.** These two products are similar to dry towlettes and used in the same manner as cotton balls or gauze and are excluded from the definition of "medicines" in Regulation 1591(c)(2). 9/23/93.

425.0827 **Spa.** Even though a spa was purchased under a prescription issued by a patient's doctor to mitigate the patient's arthritis, its sale is subject to sales tax. A spa does not fall within the definition of a device that is exempt from the sales or use tax under Regulation 1591. 6/14/94.

425.0828 **Speech Pathology Devices.** Speech devices which assist stutterers to speak more fluently are appliances or devices excluded from the definition of

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medicines, even though the device must be professionally fit by a speech pathologist who marks up the cost of the instrument.

Speech pathologists are not made consumers by statute. The furnishing of devices to patients by speech pathologists are retail sales subject to tax. 7/15/94.

425.0829 Speech Therapy Devices for Stutterers. Stutterers have normal ears, lungs, larynxes, jaws, lips, etc. Thus, speech therapy devices for stutterers such as biofeedback systems of the body do not replace any organ. They administer therapy to help develop normal speech patterns. They are, therefore, not “medicines.” 11/7/94.

425.0830 Sphincter. An artificial sphincter permanently implanted in patients suffering partial or total paralysis in order to normalize bowel movements is an exempt medicine. 11/30/76.

425.0850 Splints. Splints (and their replacement parts) designed to be fully worn on the person of the user as a brace, support, or correction for the body structure are exempt from tax pursuant to Revenue and Taxation Code Section 6369(c)(3) and Sales and Use Tax Regulation 1591(b)(4). 5/10/88.

425.0853 Skin Staples and Staplers. “Sutures,” meaning items such as silk, thread, wire or catgut used in the surgical uniting of two pieces of skin, are specifically included in the term “medicines,” Regulation 1591(b)(2). Disposable loading units, as well as the disposable instruments and loading units (when sold together), that are used to join skin tissue also qualify as “sutures.”

Disposable staplers and staples qualify as “medicines” because they are sold and used as a unit, and when sold or furnished under the conditions set forth in Regulation 1591(a), their sales are exempt from tax. Non-disposable staplers, as well as removers, are durable pieces of medical equipment and so are “appliances, etc.,” specifically excluded from the term “medicines” by Regulation 1591(c)(2). Their sales are subject to tax. 6/11/91. (Am. 2002–3).

425.0854 Sterile Water—Concha 1500. Sterile water if specially processed and labeled “Caution: Federal (U.S.A.) law prohibits dispensing without a prescription” qualifies as a “medicine”. 5/17/89.

425.0854.5 Sterile Stockinette. A sterile stockinette is a medicine when used as a cast component or as a wrapping for fractures. Under these circumstances, it functions as a support or correction device for the body structure and is exempt from tax pursuant to Regulation 1591(b)(4). However, when the stockinette is sold as a “dressing,” it does not qualify as a “medicine” and its sale is taxable. 10/6/86.

425.0855 Steri-Strips. Steri-strips are also called cover strips, suture strips and suture strips plus. Industry literature clearly states that steri-strips are not sutures and therefore do not fall within the definition of “medicines”. 5/28/93.

425.0855.5 Steri-Strips. Steri-strips, which is an elastic tape used as a wound closure, are in the nature of bandages and dressing rather than sutures. Therefore, they do not qualify as a prescription medicine. 9/12/90.

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425.0856 **Sternum Support.** A post-surgical sternum support harness is fully worn on the body of the patient and assists the natural function of the sternum to support the rib cage while the ribs are re-attaching themselves to the sternum following surgery. The product is sold only by prescription or directly to hospitals for treatment of patients pursuant to physician's orders.

The sternum support harness qualifies as a prescription medicine under Regulation 1591(b) (4); thus, the sales of this product are exempt from tax. 10/9/91.

425.0857 **Subarachnoid Screw.** A subarachnoid screw is a device inserted in the skull for direct measurement of intracranial pressure. It is a device pursuant to section 6369 (b)(2) and is excluded from the term medicine. As such, the sale of subarachnoid screws are subject to tax. 12/23/88.

425.0858 **Supplies.** Coveralls, nurses caps and bouf caps do not qualify as medicines. 5/17/89.

425.0859 **Supplies Used with Urinary Incontinence Devices.** The following items qualify as tax exempt medicines under Regulation 1591 when sold under a physician's prescription for use with an exempt urinary incontinence device:

- (1) topical antiseptic solutions
- (2) adhesives (used to hold the device in place)
- (3) adhesive removes (remove the adhesive)
- (4) lubricants (used to insert the urinary device)

The following items do not qualify as exempt prosthetic devices or otherwise qualify as exempt medicines under Regulation 1591, even though such items are used with exempt urinary incontinence devices:

- (1) cleaners and equipment which are used to remove contaminants from the urinary incontinent device
- (2) insertion kits which are used to insert the catheters
- (3) irrigation syringes which are used to clean the catheter. 1/4/85.

425.0860 **Surgical Cellulose Hemostat.** Surgical, a knitted fabric made from oxidized regenerated cellulose, used as a hemostat to halt bleeding, is applied by pressure or suturing. When saturated, it forms a coagulated mass which stops further bleeding. Since it need not be removed because it is absorbed by the body, it qualifies as a medicine under Section 6369. 11/15/66.

425.0870 **Surgical Replacement Lenses.** Intraocular lenses and their replacement parts are exempt from tax pursuant to Revenue and Taxation Code Section 6369(c)(5) and Sales and Use Tax Regulation 1591(b)(6). 5/10/88.

425.0880 **Surgical Soap.** Surgical soap qualifies as medicine if it is used by application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease. Soap used in sterilizing surgeons' hands is also exempt.

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Laboratories selling soap to hospitals should obtain a resale or exemption certificate from the hospitals who must report the tax on the purchase price of soap which is not tax exempt. 6/26/64.

425.0881 Temporary Myocardial Pacing Lead. A temporary myocardial pacing lead is a temporary disposable heart wire which is implanted during heart surgery, and generally stays implanted following surgery in the event of complications during recovery. Provided the lead is used in a post-surgical setting and is attached to a temporary pacemaker which is fully worn on or in the body of the user, it is an exempt prescription medicine, the sale of which is not subject to tax. However, if it is only used during a surgical procedure or is used with a bedside pacemaker or (heart) pacing machine, which is not fully worn on the patient, it is not a prescription medicine and its sale is taxable. 9/11/90.

425.0881.300 Tendon Implants. Hunter tendon implants are used in reconstructive hand surgery and are exempt as “. . . other articles permanently implanted in the human body to assist the functioning of . . . any natural organ, artery, vein, or limb . . . ” 7/6/78.

425.0883 Therapeutic Shoes. Sales of therapeutic shoes and inserts supplied under the Medicare Therapeutic Shoe Demonstration do not qualify as either the sale of an exempt medicine under Revenue and Taxation Code Section 6369 or as an exempt sale to the United States Government.

The Demonstration provides for the furnishing of custom molded shoes and extra depth shoes and inserts which do not meet the criteria set in Section 6369(c)(3). As such, even though the shoes are furnished under a physician's prescription, tax will apply to the sale of such shoes and inserts absent another provision of law.

It was previously determined that the sale of an item insured pursuant to Part B of the Medicare Act where the claim of the person for reimbursement is assigned to the supplier and the supplier files a claim with a carrier are not exempt sales to the United States. As such, tax properly applies to the sale of the shoes and inserts by authorized shoe suppliers. 10/26/90.

425.0883.200 Thrombosis Prevention. Anti-embolism stockings qualify as exempt prosthetic devices if they are worn on the patient and they operate separately from a compression system. However, if used only during compression therapy, they do not qualify.

A system which provides compression therapy which is comprised of a compression sleeve, pump, and tubing connecting the sleeve and the pump is not a “medicine.” 3/2/95.

425.0883.5 Tilttable Back Traction Table. A tilttable back traction table consists of a platform with a base, which has balancing means positioned at the top and a series of retainers attached to the bottom. The platform tilts and has supports positioned near the foot end in order to prevent the patient from sliding off the platform. Such a table is in the nature of a device pursuant to Regulation 1591(c)(2) and its sale is subject to tax. 3/14/90.

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425.0883.700 **Top Cat.** “Top Cat” is an electric car-top hoist that appears to be specially designed to enable a physically handicapped person to load or unload a wheelchair onto or from a motor vehicle without assistance from another person.

The term “physically handicapped” person includes only those disabled persons described in California Vehicle Code section 22511.5 as qualified for special parking privileges. Therefore, tax does not apply to the sale or use of items and materials when used to modify vehicles to be used in the transport of such physically handicapped person(s). This exemption applies to vehicles which are owned and operated by physically handicapped persons as well as to vehicles which are used in the public or private transport of physically handicapped persons. The “Top Cat” qualifies for the exemption provided under section 6369.4. Tax does not apply to the sale or use of this device when it is used to modify a vehicle for physically handicapped persons. 2/23/84.

425.0883.810 **Tracheostomy Care Kits.** Tracheostomy tubes are considered medicines only when used post-surgically. Because of this, certain sales of tracheostomy tubes will be exempt and others taxable depending on the use. These care kits are “necessary and integral” to the patient administering home care and qualify as “related supplies” under Regulation 1591(j) (see annotation 425.0259). Consequently, the tax status of each kit will depend on the tax status of the particular tube to which it is a “related supply.” 5/23/95.

425.0883.875 **Tracheotomy Appliances and Supplies.** A tracheotomy is defined in Dorland’s Illustrated Medical Dictionary, 24th edition, as a “surgical creation of an opening into the trachea through the neck, for insertion of a tube to facilitate the passage of air to the lungs, or the evacuation of secretions.” Tracheotomy appliances and supplies used to facilitate the evacuation of secretion are exempt from tax as qualifying appliances under Regulation 1591(j) [now 1591.1(b)(2)]. Those used to facilitate the passage of air would not qualify under this section. 2/22/91. (Am. 2002-2).

(Note: Regulation 1591 was amended effective March 10, 2000, and further amended April 12, 2001. Reader should note the changes to the subdivisions indicated above.)

425.0883.900 **Tracheostomy and Endotracheal Tubes.** Lantz tracheostomy and endotracheal tubes are inserted by means of an incision in the trachea for the purpose of respirating the patient and removing metabolic waste and are exempt only if used post-operatively. 7/6/78.

425.0884.5 **Traction Devices.** Traction devices which do not permit ambulatory movement do not qualify as “medicines.” On the other hand, cervical and pelvic traction devices which are worn by the user and permit ambulatory movement qualify as medicines. 8/30/91.

425.0885 **Transcutaneous Nerve Stimulators.** Transcutaneous electrical nerve stimulators, which are fully worn on the body of the user, are prosthetic devices as that term is used in section 6369(c)(4) and tax does not apply to their sale;

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however, transcutaneous electrical nerve stimulators which are not fully worn on the body of the user do not qualify as prosthetic devices and tax applies to their sale. 4/11/83. (Am. M99-1).

425.0887 Treatment Tubes. The following covers the application of tax to specific treatment tubes:

(1) Penrose Drain. Precut tubes used to drain fluids from a wound are taxable (unless utilized post surgically as a result of an artificial opening created in the human body for the elimination of human waste).

(2) Cantor Intestinal Tube. A mercury weighted tube for intestinal intubation is taxable.

(3) Stomach Tube. A tube for feeding or washing stomach is taxable.

(4) Feeding Tube. A tube for introducing food into stomach is taxable.

(5) Maso-gastric Tube. A disposable stomach decompression evacuation tube with an x-ray tip, 2 lumens, and a balloon which is inflated and positioned at esophago-gastric junction without tension is taxable (unless utilized post surgically as a result of an artificial opening created in the human body for elimination of natural waste).

(6) Trach Speaking Tube. A tube that helps tracheostomy patient to speak is exempt (when used in conjunction with a tracheostomy tube which is necessary as a result of an artificial opening created in the human body for the elimination of natural waste).

Generally, tax does not apply to tubes which are necessary as a result of surgical procedures by which an artificial opening is created in the human body for elimination of waste. Tubes implanted permanently in the human body (i.e., for more than six months) to assist the functioning of, as distinguished from replacing all or any part of, any natural organ, artery, vein or limb and which remain or dissolve in the body are not subject to tax while those implanted for a lesser period are taxable. 5/2/80.

425.0890 Trocar Catheters. The trocar catheter is used in an emergency to relieve pressure on the lungs. The catheter is inserted or thrust into the wall of the chest (with no prior incision). It is attached to a drainage and suction system to drain fluids from the chest cavity. The trocar catheter is a supply item on crash carts which are located throughout the hospital to treat patients in emergencies.

As described, the use of these devices indicates that they are used temporarily during emergency procedures and also appear to be surgical devices as they must make their own incision into the chest. Used as described, these items are taxable. 2/24/93.

425.0895 Tubular and Bias Stockinettes. These items are only considered medicines when they are used as orthotic devices designed to be worn on the patient as a brace, support or correction for body structure. Tubular or bias stockinettes which are used as chaps or as a headress in the operating room would not qualify as exempt orthotic devices. 10/2/89.

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425.0900 Tucks Pads and Fuller Shields. Tucks pads are pre-moistened towelette(s) used to clean and disinfect following episiotomy or hemorrhoid surgery and Fuller Shields are pre-moistened, used to clean and protect perineal area.

Under Regulation 1591(c)(2), towels and dressings are “medicines” when they are impregnated with a product which is recognized as a “medicine.” Therefore, tucks pads and the Fuller Shields are medicines, the sale of which to hospitals are exempt from sales and use tax under Regulation 1591(a)(3). 6/14/94.

425.0905 Urinary Bags and Meters. Urinary bags are necessary and integral to the operation of a urinary catheter and are exempt along with the catheter under Regulation 1591(b)(5). The meter appears to be used during treatment and so is a device under subsection(c)(2) and the sale of which is subject to tax. 10/6/93.

425.0906 Urinary Incontinence Devices. Urinary incontinent devices are used to collect urine from patients in the nonsurgical treatment of urinary incontinence. This device is composed of a catheter (indwelling, intermittent, external, or suction) and a collection bag together with any connectors and caps which are necessary to complete the fluid track. Since it is designed to be fully worn on the body of the user and assists in the functioning of the user’s bladder, urinary incontinent devices are nontaxable prosthetic devices under Regulation 1591. 1/4/85.

425.0907 Urinary Incontinence Products (Female). The Innova female urinary incontinence product causes involuntary contractions of the pelvic musculature and urinary sphincter in order to treat or cure incontinence. This device is composed of an externally worn, microprocessor-based electrical neuromuscular stimulator that activates a tampon-like vaginal electrode worn internally. While these devices are not akin to TENS units, they do qualify as prosthetic devices if they are fully worn on the body of the user. Typically, a TENS unit is designed to relieve pain through the use of electrical impulses which are emitted from the unit directly to the area of the body in which the patient is experiencing pain. By contrast, the female urinary incontinence device appears to assist the vaginal sphincter in performing its natural function, staying closed in order to retain urine, and opening to evacuate the bladder under the control of the patient. This use fits precisely the regulatory definition. The Liberty Female Urinary Incontinence Product, if fully worn on the body of the user, is thus a prosthetic device within the meaning of Regulation 1591(b)(5) with the result that furnishing such products to patients pursuant to the written order of a licensed physician is not subject to tax. (Regulation 1591(I).) 10/4/96.

425.0907.500 Vacuum Erection Device. The Vacuum Erection Device (VED) is used to treat impotence of men. The VED consists of a Softtouch™ Constriction Seal and a vacuum pump. The Softtouch™ Constriction Seal remains on the body for approximately thirty minutes.

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The only part of the VED that is worn on the body is the Softtouch™. Since both parts of the VED are not fully worn on the body, it is an appliance excluded from the definition of “medicines” under Regulation 1591 and its sales are subject to tax. 5/29/97.

425.0908 Vascular Intervention Devices. This device is used temporarily during surgery to remove and collect lesion tissue which is blocking the blood vessel. It also retains the tissue for analysis. It is, therefore, an appliance or device excluded from the definition of medicine under Regulation 1591(c)(2). Thus, sales of these devices are subject to tax. 4/15/94.

425.0909 Vehicle Modified for Use by Handicapped Person. A handicapped person purchased a van from a unlicensed person, intending to modify the van to her needs. The previous owner of the vehicle had modified it to some degree for use by the physically handicapped. However, the purchaser was unable to adapt it further to meet her needs and sold it prior to registering it.

A person who purchases a vehicle is liable for use tax even though the person sells the vehicle prior to transferring registration. However, the part of the transfer price attributable to modifications made to enable the vehicle to be used to transport a physically handicapped person is excluded from the amount subject to tax. 10/20/94.

425.0920 Veterinarians. Pursuant to Revenue and Taxation Code Section 6018.1, licensed veterinarians are consumers and not retailers of drugs and medicines, as defined in Section 6018.1, which are used or furnished by the veterinarian in the performance of the veterinarian’s professional services. Accordingly, the gross receipts from the sale of such drugs and medicines to licensed veterinarians are taxable while the gross receipts from the veterinarian’s sale of such drugs and medicines are not taxable. 5/10/88.

425.0926 Visistat Skin Staplers. This product is sold pre-filled and is not reusable. Therefore, the cartridge containing the staplers constitutes a container sold with contents which are medicines and the sales of the pre-loaded staplers are exempt from sales and use tax. (Regulations 1591 and 1589(b)(1)(C).) 9/26/95.

425.0930 Vitajet. Vitajet is described as an insulin injection system that injects an ultra fine stream of insulin through the skin without the use of a needle. As such, Vitajet qualifies as an insulin syringe under section 6369 (e); however, in order for the sale to be exempt from tax, it must be furnished by a registered pharmacist. Sale by a nonpharmacist to a consumer is subject to tax. 2/8/88.

425.0940 Vitamin Sale to Physicians. Sales of vitamins to a physician and surgeon for the treatment of a human being are not taxable. 7/3/64.

425.0960 Water Pills and Appetite Suppressants. Water pills and appetite suppressants provided to customers of a weight reducing facility as part of a supervised weight reducing program did not qualify as exempt medicines

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because they were not prescribed or furnished for “the diagnosis, cure, mitigation, treatment or prevention of disease.” 1/8/69.

425.0970 Wheelchair Lift Added to Vehicles. A manufacturer makes busses whose standard base does not include a wheelchair lift. At the purchaser’s request, the manufacturer will add an optional wheelchair lift, which requires modifying the configuration of the bus and putting in different wiring and control connections. The portion of the sales price of the modified bus which is attributable to the price of a wheelchair option is exempt from tax under Revenue and Taxation Code section 6369.4. 3/12/82.

425.0974 Wheelchairs, Crutches, Canes, and Walkers Purchased by a Hospital. A hospital purchases wheelchairs, crutches, canes, and walkers for the purpose of renting them to patients. Payment for the rentals is made by Medicare or by an insurer. The hospital may purchase the items for resale. If the item is rented or resold to a patient covered by Medicare, and Medicare makes the payment under Part A, tax will not apply because the sale will be an exempt sale to the United States. If the payment is made under Part B or by other insurers, tax will apply to the items resold or rented unless they are exempt as prescription medicines. Item billed under Medicare Part B are treated the same as any other sale. 10/16/79.

425.0975 Wheelchairs, Canes, Crutches, Walkers and Quad Cones. Tax does not apply to the sales of these items when sold to an individual as directed by a licensed physician. Sales of these items to medical facilities for the use of patients while at the facilities are subject to tax. 3/31/92.

425.0976 Wheelchair Pads and Cushions. Wheelchair pads and cushions which are purchased separately from the wheelchair on the order of a physician to replace or supplement the basic seats that come with the chair qualify as “replacement parts.” Sales of these items are exempt from tax when sold to an individual under the conditions set forth in Regulation 1591. 7/11/91.

425.0977 Wheelchair Restraint. This product is a vest worn by the patient and has a couple of straps that go around the back of the wheelchair. Such restraints are generally appliances excluded from the definition of medicines under Regulation 1591(c)(2). This restraint is not a part of the wheelchair and, thus, the sale of the wheelchair restraint is subject to tax. 7/29/96.

425.0980 Wigs and Hairpieces. Sales of wigs and hairpieces by a beautician or barber qualify as exempt if they are sold pursuant to the order of a doctor for the treatment of hair loss due to alopecia, burns, chemotherapy, or radiation. The retailer claiming these sales as exempt must retain a copy of the doctor’s order and a record of the name of the purchaser, date of sale, item sold, and sales price. 4/13/90.

425.0985 Worn Fully Traction Materials. Traction materials must be fully worn on the person of a user to be classified as a medicine. Some sling

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arrangements (e.g., an arm sling worn around the neck or shoulder) would be considered fully worn on the person of the user. 10/2/89.

425.0987 Wound Dressings and Wound Packing. These types of items are utilized on serious, open wounds and although they are not medicated, they are made of material that actually speeds up the healing process which generates new cell development. They also help keep the wound moisturized which promotes accelerated healing. Dressings are specifically excluded from the definition of medicine under Regulation 1591(c)(2), with the result that sales of such items are subject to tax. 8/25/94.

425.1000 Wright Linear Pumps. Wright Linear Pumps are used to reduce the size of an arm or a leg (swollen due to intractable edema) by squeezing the fluid back into circulation by using a sleeve or trouser like appliance. All treatment is pursuant to a doctor's order and may be done in a clinic or away from the clinic.

It has previously been determined that such compression devices are neither orthotic or prosthetic devices as defined in Regulation 1591 (b)(4,5). They do not serve as a brace, support, or correction, for the body structure nor replace or assist in the functioning of a natural part of the body nor are they fully worn on the body. Therefore, they are appliances, devices, or articles described in Regulation 1591(c), sales of which are subject to tax. 5/20/93.

425.1045 Zbar. This product is marketed as "part of your diabetes dietary management regime . . . a clinical study . . . shows Zbar may regulate blood glucose levels up to nine hours in many people." It appears that Zbar is designed to regulate blood sugar levels and is a "medicine," not a food product or dietary supplement. Thus, although it is in bar form, its sale is taxable unless sold in a manner which would entitle the sale to be exempt as a "medicine." Over-the-counter sales of the products are subject to tax. 2/24/97.

425.1060 Amigo Deluxe/Hoverground Motorized Wheelchair. The Amigo Deluxe and Hoverground are electric three-wheel devices which are used for the same purposes as wheelchairs. Therefore, they also qualify as wheelchairs. Thus, when the Amigo Deluxe or the Hoverground is sold to an individual for that individual's personal use as directed by a physician, sales to that individual are exempt from the sales or use tax under section 6369.2. 12/15/95.

425.1065 Classification of Specific Medical Products. The following items would be considered "medicines" when purchased pursuant to the direction of a physician. Tax would apply if the items are "self-prescribed."

Custom-Made Venous Pressure Gradient Elastic Supports
Burn Pressure Garments and Special Elastic Supports—Anti/Burnscar
Knee Length Anti-Embolism Elastic Stockings—Anti-Em
Thigh Length Anti-Embolism Elastic Stockings—Anti-Em
Anti-Em Waist-Hi Tights
Knee Length Seamless Anti-Embolism Elastic Stockings
Thigh-Length Seamless Anti-Embolism Elastic Stockings

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Mammary Support—Fredricks
Abdominoplasty—Freeman
Elastic Supports—Facioplasty
Elasticized Stockinette—Elastic-Net
Mastectomy Brassiere—Feminique Long-Line
Mastectomy Brassiere—Enchanta
Mastectomy Brassiere—Feminique— Custom Made
Ladies Elastic Support Hose—Jobst-Stridette
Ladies Elastic Support Panty Hose—Jobst-Stridette
Elastic Support Pregnancy Panty Hose—Jobst—Relief
Men's Elastic Support Hose—Jobst-Stride
Jobst Jet Air Splints

The following items would be “medicines” as they are necessary and integral elements of support hose:

Garter Belts—Custom Made & Standard
Garter Belts for Thigh-Length Anti-Em Elastic Stockings

Tax would not apply to the following items as they are deemed to be dispensed on prescription.

Breast Prosthesis—Feminique
Breast Prosthesis—Yours Truly—All Silicone

Tax would apply to the following items as they would not be considered “medicines”

Jobst Extremity Pump Intermittent Compression Unit
Major Components—Anti/Shock Airpants
Minor Components—Anti/Shock Airpants
Nylon Pneumatic Appliances—Heavy Duty
Amplastz—Siegel Radiology Pneumatic Pressure System by Jobst
Plastic Pneumatic Pressure Bandages
Blood Pressure Device
Plastic Patching Kits
Jobst Surgical Air-Boot
Inflating Devices
Jobst Cyro/Temp System—Combination Cold and Pressure Unit
Automatic Rotating Tourniquet—Auto Quet
Special Washing Solution—Jolastic
Accessories—Auto-Quet
General Body Lotion—Com-Pat
Partial Occlusion Inferior Vena Cava Clips, Teflon-Mortez
Stasis Pads

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Partial Occlusion Inferior Vena Cava Clips, Teflon-Adams-De Weese
Artificial Wool Decubitus Pad* (for wheelchair)
Jobst Surgical Tourniquets—Tourni-Cuff
Floatation Devices—Hydro-Float
Jobst Leg Elevator
Floatation Devices—Hydro-Float Wheelchair cushion*
Anti-Em Extremity Pump
Accessories—Anti-Em Extremity Pump
Floatation Devices—Accessories Hydro-Float
Anti/Shock Airpants
Rigid Wheel Chair Seat, Std.*
Rigid Wheel Chair Seat, Jr.*

*If these items are sold as a part of a wheelchair, they could be nontaxable. If they are sold separately, tax would apply. 11/15/77.

425.1070 Grab Bars, Van Ramps, Parts for Wheelchairs, and Bath Benches. The application of tax to sales of items sold to an organization that aids muscular dystrophy patients follows:

Grab Bars. Grab bars are subject to tax unless part of a modification to a vehicle used to transport physically handicapped persons as set forth under Regulation 1591(l).

Van Ramps. Van ramps are subject to tax unless part of a modification to a vehicle used to transport physically handicapped persons as set forth under Regulation 1591(l).

Parts For Wheelchairs. The following items for wheelchairs are not subject to tax if all the conditions set forth under Regulation 1591(k) are met:

- (1) Batteries for electric wheelchairs but not battery chargers
- (2) Belts for wheelchairs
- (3) Cushions
- (4) Lap boards and trays are not subject to tax if they are actually attached to the wheelchair and are a part of the wheelchair itself.
- (5) Mechanical devices to aid in eating and writing are subject to tax unless they are actually attached to the wheelchair itself.

Bath Benches and Shower Attachments. Bath benches and shower attachments are items subject to tax and are not within any exemption provided by Regulation 1591. 7/14/81.

425.1100 Yankaver Suction Tube. This tube is used for oral suctioning and is hand held rather than worn. Thus, it is taxable. 10/2/89.

425.1103 Kidney Dialysis Supplies. Dialysis fluid additives such as Sorb cartridges, Redy K-1 and Redy Ca (D-50) are not subject to tax.

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Equipment cleaning supplies such as formaldehyde, Klenzade XY-12, Veshpene, and vinegar are not medicines.

Items which are part of the dialysis machine such as tie guns, tie straps, and latex tubing are medicines.

Tax applies to hydrogen peroxide if used to clean machinery or clothing. It is a medicine if used for external application to a person.

Substances used to test dialysis concentrates, such as ammonia test paper, chloride kits, chloride indicator, mercuric nitrate, salt standard, nitric acid and standard solutions, are taxable. 9/28/78. (Am. M99-1).

- 425.1105 **Legging Orthosis.** The legging orthosis is worn around the lower leg from the knee to the instep. It is constructed entirely of 3.8 cm and 5.1 cm bands of woven nylon loop fastening tape. The legging supports the venous and lymphatic structure and it is prescribed when the physician determines that the patient's limb has lost the ability to function properly without orthotic support.

The legging orthosis qualifies as an orthotic device because it supports the internal leg structure and is fully worn on the body of the patient. As a result, sales of this item are exempt from tax. 12/28/93.

- 425.1110 **Medicines—Specific Items.** Items used temporarily during surgery or therapy or to apply medicine to the patient are not considered to be medicines. Based on these standards, the following items are not exempt from sales tax:

- (1) Lemon Glycerin Swab Stick,
- (2) Thiortic Cannula,
- (3) Suction Catheter.

9/17/92.

- 425.1115 **Medifast.** Medifast is a weight control program closely monitored by a physician with related lab work. It involves the controlled intake of nutrients providing 486 calories a day and are sold on prescription. When sold under these conditions, Medifast products qualify as prescription medicines. 9/29/92.

- 425.1117 **Modification of Paratransit Vehicles.** A company manufactures a paratransit vehicle which is designed totally for use by handicapped persons. It wanted to know whether available options such as air conditioning, front lighted signs, special paints, safety kits and flares and transmission coolers are exempt from tax when built in conjunction with the paratransit vehicle.

The term "physically handicapped" persons as used in section 6369.4 includes only those disabled persons described in California Vehicle Code section 22511.5 as qualified for special parking privileges. Tax does not apply to the sale of items and materials which are used to modify vehicles in those instances where the modifications to the vehicles are necessary in order to transport such physically handicapped persons. This exemption includes vehicles which are owned and operated by physically handicapped persons as well as vehicles which are used in the public or private transport of physically handicapped persons. If modifications made to a vehicle are specifically necessary to enable the vehicle

PRESCRIPTION MEDICINES (Contd.)

to be used to transport physically handicapped persons, they are exempt from tax under section 6369.4. In some instances, items such as air conditioning, insulation, and citizens band radio might be necessary to transport persons with certain types of disabilities while in other cases they would not be considered necessary.

Modifications involving roof extension, modified door, door operator, supplemental steps, floor lights and wires, seating, wheel chair lifts and controls and wheelchair restraints would appear to qualify. 3/11/81.

425.1120 Norplant System Contraceptive. The Norplant System is a contraceptive device that is implanted in the arm just under the skin and releases hormones similar to those in oral contraceptives. It appears to operate in the same manner as intrauterine contraceptive devices that release chemicals or hormones into the body and which have previously been declared to be “medicines.” Tax does not apply to sales of these devices to county health clinics for use in the treatment of a human being nor to the furnishing of the devices by the clinic to human beings. The county must issue an exemption certificate to its suppliers. The certificate must conform to Regulation 1667. 8/14/92.

425.1130 Programmable Drug Infusion Devices. The following listed items are not programmable drug infusion devices as defined in Regulation 1591(b)(7): General sets, automatic piggyback sets, filter sets, anesthesia/surgical sets, solusets, extension sets, pediatric/neonatal sets, and specialty sets.

These sets are in the nature of traditional I.V. administration equipment whereby fluids or medicine is administered to a patient through tubing. There is no mechanism available with the administration sets which automatically programs the delivery of the medicine to the patient other than through a traditional drip method and an on/off switch. Also, these are not fully worn on or implanted in the human body of the patient. Therefore, the retail sales of these items are subject to tax. 3/28/83.

425.1135 Rancy Clips. These clips are used during certain surgical procedures (i.e., neurosurgery, facelifts, etc.) as an external “suture” to temporarily control bleeding. The “clips” are made of plastic and are disposable.

The “Rancy Clips” are plastic clips that are designed temporarily to control bleeding on incision edges during surgery and, thus, are not “sutures” pursuant to Regulation 1591(b)(2). Therefore, their sale is subject to tax. 1/14/86.

425.1140 Skin Care Products. A line of skin care products is sold only to physicians and aestheticians for treatment of skin ailments. Three of the products of the line may only be sold to licensed physicians. None of the products require a medical prescription per se. The patient receives initial treatment by the physician followed by a prescribed regimen of home care.

Products sold or furnished by a physician for treatment of a patient are exempt. Sales by nonphysicians or to patients of physicians outside a prescribed regimen of treatment are subject to tax unless sold under a prescription. 11/16/94.

PRESCRIPTION MEDICINES (Contd.)

425.1141 **Skin Care Products.** To qualify for exemptions as medicines, creams and washes sold to incontinency and ostomy patients must be prescribed by a doctor. In addition, prescriptions for such items for incontinency patients must be filled by a registered pharmacist, while prescriptions for such items for ostomy patients may be filled by a medical supply vendor. There is no special exemption for the sales of such products to incontinency Medi-Cal patients by a nonpharmacy provider.

The disparity in the manner in which the exemption for these products is available to the two types of patients is due to legislative action. The Board staff has no authority to broaden the exemption, regardless of the inconvenience that may be caused to incontinency patients, their suppliers and insurers. 8/24/92; 10/8/92.

425.1150 **Syringes, Disposable and Pre-Filled.** Syringes are normally regarded as devices, and the amounts from the sale or purchase therefore are taxable. However, when a syringe is sold pre-filled with an exempt medicine, is disposable, and is for a one-time use only, the pre-filled syringe is regarded as a container sold filled with exempt contents. The price sold or paid for the syringe in this situation is exempt. 4/24/95.

425.1160 **Temperature Monitoring Systems.** The following products have a temperature sensor which is connected to a temperature monitoring system. The sensor is attached to or inserted into the patient:

Myocardial Temperature Sensor

Tympanic Temperature Sensor

Foley Catheter Temperature Sensor

Acoustascope Esophageal Stethoscope with temperature sensor

Esophageal/Rectal Temperature Sensor

Skin Temperature Sensor

Each product must be supplied by or on order of a physician.

These products are durable medical appliances and, thus, subject to tax when sold at retail. 2/1/94.

425.1165 **Testicular Gel Implant.** This is a silicon implant put into the testicles when replacement is necessary due to disease (example—cancer). Such implants are medicines under Regulation 1591(b)(2). Thus, sales of the implants are exempt from the tax. 8/25/94.

425.1170 **Topical Creams/Ointments.** Topical creams and ointments qualify as medicines when sold or furnished pursuant to Regulation 1591(a) and their sales are exempt from tax. 11/23/94.

PRESUMPTIONS

See Gross Receipts; Use of Property in State and Use Tax Generally.

430.0000 PRINTING AND RELATED ARTS—Regulation 1541

See also Advertising Agencies, Commercial Artists and Designers; Automatic Data Processing Services and Equipment; Mailing Lists and Services; Producing, Fabricating and Processing Property Furnished by Consumers—General Rules; Service Enterprises Generally.

(a) IN GENERAL—ACTIVITIES CONSIDERED SERVICES OR SALES.

430.0025 Admarking. Admarking is a process of addressing. It is used in place of labels on outer envelopes or in the business reply card. Accordingly, the charges for addressing the outer envelopes would not be subject to tax. However, the charges for printing of addresses on business reply cards is subject to tax. 4/9/86.

430.0055 Calligraphy. Calligraphy is regarded as artwork. Tax applies to calligraphy charges, even in circumstances where calligraphy is done on paper or to other products supplied by the customer. However, tax does not apply when calligraphy is done as addressing for the purpose of mailing. (Regulation 1541(c).) 12/9/93.

430.0060 Collating Services—Printing. Collating, the placing of printed materials into a desired order, is taxable processing labor if it is part of a printing or binding operation resulting in the manufacture of an end item whose sale is not exempt from the sales and use tax. 6/1/65.

430.0061 Composed Type—Line Borders. A medical publishing company has manuscripts written by physicians which are then put into the publisher's format by a designer. The film house prepares the manuscript and illustration for printing and the film is given to a printer for completion of the process of booklet production. The designer's work consists of only typography with straight line borders around areas designated for illustrations.

For purposes of Regulation 1541, composed type together with line borders of plain or straight lines is considered to be "composed type only." Therefore, tax does not apply to the designer's charge for a product in the form of a layout consisting of only composed type and boxes of plain lines with notations within the boxes to designate position and sizes of illustrations. The fact that the designer may use a copy of an illustration for placement purposes and not to incorporate an image of it in the layout would not affect the application of the tax. It would still be exempt from tax. 8/11/94.

430.0061.350 Composition of Type Matter. The following are the steps used by a taxpayer in producing a final print of its type composition service:

(1) The customer provides the basic material that is to be set up. The taxpayer creates the set up on a computer which creates a floppy disc.

(2) This disc is then put into a computer typesetter which transfers the material onto sensitized paper.

(3) The sensitized paper is developed just like photography film and a developed print is provided.

(4) The developed print plus two copies (ordered by the customer) is sent to the customer for editing and/or any other corrections.

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(5) After the editing and correction, the print is returned to the taxpayer to obtain the final print. This could result in the repeat of steps one through four.

(6) The customer only wants the final copy because it is used to make the camera ready copy to be used for reproduction purposes.

(7) In addition to the final print, the customer orders and gets two copies of the print. These two copies are for layout and mock-up purposes by the customer's art department and editorial director.

In this situation, the final print is the direct product of the type composition service. The two copies furnished to the customer in step four for editing and correcting to produce the final print are furnished incidental to the type composition service. Tax does not apply to the taxpayer's charge for the type composition or the copies incidentally furnished.

However, the copies provided in step seven for use in layout and mock-up purposes are not incidental to the type composition service. Accordingly, tax applies to the charge for such copies. 9/20/83.

430.0065 Customer Printout of Mailing Labels. A commercial mailer has received a mailing list from a customer that requires upgrading to zip+4 addressing.

Assuming the commercial mailer is only providing nontaxable mailing services to the customer the upgrading of the zip code to zip+4 is part of the service, and the charge is nontaxable. 11/2/92.

430.0067 Cutting and Folding. A printer provided the following situations, and asked for information on the application of the sales tax.

(1) A customer brings in some paper for us to cut.

When you make a charge for cutting paper for a customer who is a consumer, the charge is subject to tax as a sale of fabrication labor. (Revenue and Taxation Code Section 6006(b).)

(2) Same as (1) except we provide the paper instead of the customer.

Tax applies to your total gross receipts from the sale including your charge for cutting the paper.

(3) A customer brings in a job, printed elsewhere, for us to cut and fold.

Sales tax applies to your charge for cutting and folding the customer's paper. However, if folding is for the purpose of mailing, and the charge for folding is separately stated on the invoice, it would be nontaxable. (Regulation 1541(c).) [now 1541(g).]

(4) Same as (3) but customer is producing a brochure (map of the area with business card size advertisements) as a free promotional service. He does not charge anyone for the brochure. He does charge people for their advertisements. He mails 10% through the post office and delivers the rest himself.

From the information provided it appears that the brochure does not qualify as an exempt periodical. Accordingly, tax applies to your charge for cutting and folding except the charge for folding is nontaxable when folding is only for the purpose of mailing as noted in situation (3) above.

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(5) Same as (4) but we do the whole job. The customer provides camera ready copy.

Sales tax applies to your charge. However, folding charges may be exempt as explained in (3) above. 6/5/91. (Am. 2001-3).

(Note: Regulation 1541 was amended September 1, 1999. Reader should note changes to the subdivision indicated above.)

430.0067.825 Design Concepts. The transfer of design concepts which do not constitute engineering drawings is taxable whether they are transferred on paper or disk. The fact that the designs are preliminary or may be modified by the customer is immaterial. 4/10/95.

430.0068 Desktop Publishing. A person designs master pages (mechanicals) for business cards, letter heads, forms, and newsletters with a desktop publisher. He also buys paper and envelopes for the printing job which he takes to the printer along with the mechanical for the reproduction of copies.

When the person contracts to provide not only the page design and typography but also the printed matter, tax applies to total gross receipts including the charge for designing the pages and the typography. 5/26/88.

430.0080 Duplicating Form Letters. The process of duplicating form letters should be regarded, for sales tax purposes, as similar to mimeographing or multigraphing and the tax, accordingly, as applicable to charges for the furnishing of letters thus duplicated.

The only reason for not regarding the furnishing of typed letters as taxable is that the personal service element is considered to outweigh the sale element. It is merely a matter of degree, but where letters are produced by "mass production" methods as by mimeographing, multigraphing, or some other method of duplication, the process is simply another form of printing and the charges are, therefore, taxable. 1/30/51.

430.0100 Embossing. The charge for embossing a customer's name on new items is taxable, but not on used items. 1/26/50.

430.0140 Engraving New Items. The charge for engraving new items which are furnished by consumers, is taxable. 7/26/50.

430.0145 Folding Printed Material. A customer purchases a single-page advertisement and has the printer fold the single page twice to permit insertion into an envelope.

If the folding of the advertisement is merely incidental to the nontaxable mailing service provided by the printer, tax does not apply to the charge for folding. However, if a customer contracts to have the printer provide brochures that are folded, tax applies to the total amount charged to the customer including the charge for folding. 11/2/92.

430.0146 Hand Lettering. A person hand letters names and dates on documents, e.g., certificates awarded for achievements, etc., furnished by customers. The

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work is regarded as similar to an engraver's handwork in inscribing names and dates on trophies. The lettering is regarded as artwork. The charges are subject to tax. 9/16/75.

430.0146.250 **Inserting.** Charges for inserting printed material furnished by a customer to form a distinct end product is a charge for fabricating tangible personal property and subject to tax under Regulation 1526. For example, insertion of unattached papers into a folder to form a loan application folder is regarded as the creation of an end product since the papers are all related and necessary to a specific purpose (i.e., applying for a loan). 10/31/89.

430.0147 **Laser Imaging.** Charges for printing of personalized letters by means of laser imaging are subject to tax. 4/9/86.

430.0149 **Marketing Consultation and Materials.** A business provides consulting services with respect to marketing strategy. The end result is a written report which is given to the customer. The report recommends "corporate positioning and/or thematic direction for acceptance by the client before approval is given to commence creative services." For some customers, the business also provides tangible personal property such as brochures in addition to the reports.

If the consultation services are rendered prior to entering into any contract for tangible personal property, only the charges related to the tangible personal property are taxable. If there is a single contract for both consultation and property, the consultation will be regarded as a service related to the sale of the property and the entire charge will be taxable. 2/1/94.

430.0150 **Manufacturing Waste.** A printer purchases 1200 sheets of paper to do a printing job calling for 1000 sheets. 1100 sheets are used on the job. The remaining 100 sheets are not manufacturing waste. If the printer uses these sheets to create its own letterhead stationary, the printer owes use tax on the 100 sheets used for this purpose. 9/7/93.

430.0158 **Multiple Listing Service Books.** The real estate multiple listing services maintain listings on a computer data base which may be accessed via modem by the participants. The listings are also printed in book form. Many of the multiple listing services contract with outside vendors who both maintain the computer data base of listings and print the data base in a book format. These vendors charge input or insertion fees for each listing entered into the data base as fees for the multiple listing service books they print.

If the vendor's charge for an insert or for input into the data base is optional—that is, the vendor does not require the purchase of the service as part of the sale of the books—the charge for the data insert or input is not subject to sales tax. 4/13/92.

430.0170 **Out-of-State Printing.** The printing of stationery outside California upon orders from customers in-State for their use in California is subject to the use tax. 3/22/60.

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430.0180 **Petitions and Briefs.** Sales tax applies to charges for printing petitions, appendices and briefs which are to be used in proceedings before the U.S. Supreme Court when the documents are delivered to the purchaser in California. 8/20/70.

430.0190 **Preprinted Post Cards.** A sale by an out-of-state firm of pre-printed post cards sent as a gift to recipients as specified by the customer are not subject to sales and use tax when the cards are deposited out-of-state by the seller. Title passes upon deposit at the out-of-state point and tax does not apply because the use occurs outside California. On the other hand, if the cards are mailed in bulk directly to the customer in California for subsequent mailing, tax does apply to the cards, but not to the separately stated charge for postage on the card. 11/26/90.

430.0192 **Price List Mailed Out-of-State.** Neither the California sales nor use tax apply to any of the charges made by an out-of-state printer for the production of a price list for a California consumer when the printer addresses and mails the price lists to many recipients specified by the consumer. Title to the price list and any other items contained in the envelope passes to the recipient upon deposit of the mail in a location outside of California. Use tax does not apply because the use, which is passage of title by gift, occurs outside of California. The sales tax does not apply because the sale occurs outside of California. 11/26/90.

430.0194 **Printing, Bindery, and Secretarial Service.** Sales tax applies to charges for printing, regardless of whether the customer furnishes the paper and photocopies. Charges for pre-press services (including stripping and cutting of stock to go to press) are includable in the gross receipts from the sales of printed matter.

Cutting and trimming, padding of forms, drilling and punching holes by machine and by hand, scoring and perforating by machine and by hand, numbering by machine and by hand, collating by machine and by hand, hand gathering of pages for booklets, stitching, book binding-Velo and spiral, punching holes for binding, folding by machine and by hand, and binding legal briefs for attorneys are a fabrication of tangible personal property. When performed for a consumer, tax applies to the total charge.

Tax does not apply to charges for typing original letters or forms for customers. If the composition of newsletter and flyers is merely the composition of type matter only with no artwork, tax does not apply to charges for such composition. 4/1/89.

430.0195 **Printing Blank Municipal Bonds.** A taxpayer prints blank municipal bonds and sells the blank bonds to various banks in California. The banks do not sell blank bonds to investors. The bonds must be registered before they are sold to investors. Part of the registration process consists of the bonds being dated as of a registration date, signed by both the county and municipality guaranteeing the bond and the bank registering the bond, and printed with the signature of the county or municipality issuing the bond through a facsimile, rubber stamp or a signature plate containing the official signature.

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As registering agents for the counties and municipalities, the banks issue bond certificates to investors. The banks use the forms as part of the registration service that they perform. The certificates are only an indicia of the investor's ownership interest in the municipal bonds. Investors do not enter into contracts with the banks to purchase the security document itself, but rather the interest in the bond that the document represents. The transfer of the bonds to the investors is incidental to the banks' service of registering the bond. For sales and use tax purposes, the banks are the consumers of the forms they use in performing registration services, not retailers of the forms to the investors or to the entity which issue the bond. The taxpayer's sales of the printed blank bonds to the bank are subject to the tax. 9/12/96.

430.0225 Services as Part of the Sale. Charges for gathering together a lab analysis, clarifying requirements and obtaining proof of mailing in connection with the printing of an annual report are part of gross receipts. While these functions may not be fabrication labor, they are services which must be paid as a condition of receiving the printed matter. As such, they are "services that are part of the sale" under Section 6011(b)(1) and 6012(b)(1). 8/23/90.

430.0226 Services that are Part of the Sale—Typesetting. Taxpayer sells party items such as napkins, ribbons and wedding favors. If the customer so orders, the taxpayer will imprint names, dates, etc., on the party items. The imprinting is done with a Kinsley machine by inserting type faces and then stamping the imprint on the item being personalized.

Although there is an exemption for the service of typesetting, the exemption does not apply if the service is part of the sale of the printed matter, as it is in this situation. The sale is of imprinted items and all charges connected to the fabrication thereof are part of the gross receipts subject to sales tax. 5/3/91.

430.0227 Services to Publishers. A taxpayer receives an author's paper manuscript and word processing disk files from a publisher. The paper manuscript is edited and sent to the author for approval. The corrections are entered onto the original computer disk files. Page layouts are prepared, including any computer generated illustrations that are required. Proofs are then printed by computer and copies are sent to a proofreader, the publisher, the author, and an indexer. Corrections are returned, the computer files are changed, and new proofs are printed for confirmation. The file is then sent to a local firm for production of lithographic film negatives. The film is returned for inspection and packaging. The film and the proofs are then sent to an out-of-state printer. The contract provides that title to all tangible personal property purchased as manufacturing aids passes to the publisher prior to use by the taxpayer.

When the tangible personal property is sold to the publisher in this state, tax applies to this sale regardless of the fact that the final product is shipped to a point outside this state. This includes conversion of data from IBM to Macintosh compatible when subcontracted to a third party and sets of photocopies sent to the proofreader, publisher, author and indexer which are shipped to persons in this

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state. It does not include the lithograph film if no use is made prior to shipment outside the state. Inspection and packaging of the film would not be a “use.” 10/19/94.

430.0228.200 Stamps and Stamped Envelopes. A taxpayer will be selling at retail stamps and stamped envelopes over the counter and through vending machines. The stamps will be contained in folders or wrappers. The stamped envelopes will be either postage imprinted envelopes purchased from the United States Postal Service or envelopes purchased from private vendors upon which stamps are attached. All stamps and stamped envelopes are sold for purposes of postage and not for the purpose of stamp collection.

When a person purchases stamps for the purpose of postage, the true object is to obtain the performance of postal service. Gross receipts from the sale of U.S. Postal Service stamps sold for the purpose of postage are not subject to tax. The folders or wrappers containing the stamps are “containers.” Since the sale of postage stamps for postage is not subject to tax, neither is the sale of containers holding those stamps. (Section 6364(b)).

Envelopes are tangible personal property the retail sales of which are subject to tax. The face value of the postal charges, whether in the form of stamps attached to envelopes or postage imprinted on envelopes by the Postal Service, may be subtracted from the taxpayer’s taxable gross receipts.

Sales tax applies to sales through vending machines of stamps and stamped envelopes in the same manner as discussed above. 3/12/87.

430.0230 Word Processing. A word processing operator keyboards and records an address list and standard letter on magnetic media. The letter is then automatically typed to each person on the address list. The pre-recorded address list is then used to address envelopes inserted into the machine. The charges made for setting up the machine, keyboarding the material and typing out the letters automatically are taxable. The charges made for addressing the envelopes are nontaxable if separately stated.

An author brings a word processing company a manuscript (could come in many forms—dictated on a cassette, handwritten, previously typed, or a combination of all three). The operator keyboards the material and records it on magnetic media. A draft copy of each page of the recorded material is printed out (typed automatically) and given to the author to proofread. The author makes corrections and changes on the draft and returns it to the operator. The operator makes the necessary changes using the word processing machine. A final copy is then printed out for the author to submit to a publisher. The charges made for the original keyboarding of the manuscript, printing out the draft copy, editing, and printing out a final copy are nontaxable. If carbon copies are prepared at the time of the original copy they are nontaxable. If photocopies are prepared they are taxable.

An attorney brings several paragraphs to a word processing company which uses word processing equipment to keyboard and record the paragraphs on magnetic media to form a “paragraph library.” The attorney can then notify the

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company to select, for example, paragraphs 1, 8, 11, 29, 16, 12, 87, 100, 56, and 57 in that order to create a will for his client. The attorney provides variable information to be inserted into proper position in the paragraphs, for example: maker of the will, maker's spouse, maker's children and their date of birth, city and county of residence. The operator instructs the machine (with keyboard commands) to assemble those specified paragraphs with the necessary variable client information and print out (automatically type) a will. All of the charges made for keyboarding original paragraphs, printing out a draft of all paragraphs for the attorney's use, assembling the paragraphs as requested, and printing out individual wills and any carbon copies of the original are nontaxable. If any photocopies are made, they are taxable.

A client has a list of 2,000 names that he is going to use monthly for a mailing. Every month the list has to be typed on labels to be applied to envelopes, sorted into zip code sequence, and mailed. The word processing company keyboards the names and addresses and records them on magnetic media. The machine is instructed (using keyboard commands) to sort the names into correct zip code sequences before the list is finally stored on the magnetic media. Each month the equipment is set up and, with an operator in attendance (giving keyboard commands), the names are printed (automatically typed) on continuous form labels. The charges made by the word processing company for keyboarding original names and addresses, setting up and performing sorting, and the monthly set up and print out of the names onto labels are all nontaxable charges for addressing.

When a word processing company types identical letters using word processing equipment, the charges made are taxable since the work is taxable printing. If the same letters are typed by a typist on a regular typewriter, tax does not apply.

Tax does not apply to charges made when a word processor is used to produce copy which is acquired and used exclusively for reproduction purposes since Revenue and Taxation Code Section 6010.3 excludes typography from the definition of sale or purchase. 7/2/82; 7/16/82.

(b) PRINTING AIDS

430.0242 Artwork Licenses. A taxpayer obtains the license to use artwork from an artist. The taxpayer licenses the use of the design to clothing manufacturers who reproduce the artwork on items of clothing. The taxpayer transfers to the clothing manufacturer the very same artwork which was obtained from the artist rather than a reproduction. Assuming the artwork is not returned to the artist, the artist's transfer of artwork to the taxpayer is a sale for resale. The taxpayer's transfer to the clothing manufacturers is taxable unless the transfer constitutes a sale in interstate commerce or is otherwise exempt. 6/14/94.

430.0244 Camera-Ready Art. A graphic artist does the design, layout, and prepares camera-ready art for a client who publishes a monthly newsletter. On occasion, the artist may also contract to print the newsletter.

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In those cases where the artist only sells the camera-ready art, the sale from the artist to the client is subject to tax, even if the sale of the printed matter is exempt. For example, an artist contracts to provide only camera-ready art for the client, and the client separately contracts with a printer for the printing work. The delivery of the camera-ready art to the client, or to the printer for the benefit of the client, would result in a taxable sale even if the printer's sale to the client is exempt.

On those occasions when the artist contracts with the client to print and sell the newsletter to the client, the gross receipts from the sale of the newsletters would not be subject to tax if the sale is for resale or qualifies for the periodical exemption. In such cases, if the artist only incidentally produces the camera-ready art for its own use, as a manufacturing aid, and does not transfer title or possession of the artwork (manufacturing aid) to the client, then the artist is the consumer of the camera-ready art. If this occurs, tax would apply to the sale of materials to the artist, which were used to produce the camera-ready art. 11/27/89.

| 430.0246 **Charges for Camera-Ready Copy.** A printer prepares camera-ready copy and uses it to print equipment operating manuals which are sold to the seller of the equipment. The operating manuals are sold ex-tax for resale. The printer retains title to and possession to the camera-ready copy and eventually discards it. The printer makes a separate charge for the camera-ready copy to the customer. Since the camera-ready copy is not sold to the customer, the charge for it is regarded as part of the charge for the manuals. Since the sale of the manuals is not subject to tax, tax does not apply to the separate charge for the camera-ready copy. 1/7/75.

| 430.0255 **Computer-Generated Artwork.** A retailer of keyboarding or computer services generates computer artwork, such as company logo or illustration, which become the property of the customer.

| Charges for computer-generated artwork, graphics, designs or logos are subject to tax where the true object of the contract is the output and not the services rendered in providing the object. 11/2/92.

430.0288 **Lease and Sublease of Intermediate Products.** An advertising agency leases photographs and illustrations from photographers for use as manufacturing aids to produce finished art. The advertising agency's use of a title passage clause in its contracts with clients is inappropriate when it uses the leased photographs in preparing property it sells to its clients because, by leasing the photographs and illustrations from photographers, the advertising agency does not have title to the photograph to pass to the client.

If the advertising agency acts as an agent to its client under Regulation 1540(a)(2)(A), it may lease the photographs and illustrations from the photographer on behalf of the clients. In that case, the agency should pay use tax to the lessor on behalf of the client. The agency's reimbursement for the lease should be listed and priced separately from the agency's charge for the final product.

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An advertising agency who wishes not to act as an agent on behalf of the client but rather to sublease the property to the client may timely pay use tax to the photographer (lessor) and, prior to making any use of the property, lease the property to the client in substantially the same form as acquired. If it does so, its sublease to the client is not taxable. The advertising agency may alternatively issue a resale certificate to the lessor and, prior to making any use of the property, sublease the property to the client, collecting use tax from the client on that sublease. In the latter event, the advertising agency's sublease of the property is subject to use tax regardless that the agency's sale of the final product to the client is exempt from tax (i.e., sales in interstate commerce) or is a nontaxable sale for resale. When the advertising agency acts as the seller, the following clause between the agency and its clients would be acceptable evidence that the property was subleased to the client prior to use by the advertising agency:

"It is expressly understood that, when the agency leases from lessors intermediate products, such as photographs and illustrations, the agency subleases such property to you prior to any use by the agency whether or not the agency transfers possession of the property to you. Any use of the leased property by the agency is on your behalf." 7/17/97.

430.0290 Leased Photograph. A printer may lease stock photographs under a resale certificate, if the printer has an agreement with its customer to sublease the photograph to the customer prior to its use. 10/19/94.

430.0338 Reusable Printing Aids. If printing aids of unique utility to a particular customer are reusable, they are "special printing aids" within the meaning of the Regulation 1541 even though they are not in fact reused. 10/16/85.

430.0340 Negatives and Plates, sale for use by printers before transfer of title to their customers is taxable as retail sale. Where printer is in doubt as to time he will use material, he should pay tax to vendor and deduct cost later from return if resold before use. 10/30/50.

430.0340.800 Printed Sales Messages/Printing Aid. A company contracts separately with an advertising agency to do the mechanical through the color separation process and a printer to do the printing, with each company billing separately. Provided the transaction meets all the other requirements of a sale of a "printed sales message," the sale by the advertising agency would not qualify as a sale of printed sales messages. Only the printer's sale of the printed matter could qualify an exempt sale.

An agency purchases for resale photography, art, and other products or services that become a component part of the finished product. It passes title to the company prior to any use by the agency. The agency partially develops the product in one geographical area, ships it to another geographical area, both in California, for completion by another contractor working for the agency. The contractor, in turn, ships the product to an out-of-state printer who prints the

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insert and ships it directly to a California newspaper for distribution. The customer is billed for the mechanical/color separation separately from the printing.

Under these facts, and assuming that the company is contracting only with the advertising agency for the purchase of printed matter, the application of tax to the advertising agency's charge for the photography, art, and other property it purchases for resale depends upon whether the advertising agency makes any use of the property in California prior to shipping it out of state. If the advertising agency produces, or has the subcontractor produce, a color separation in California, the photography and art do not become an ingredient or component part of the color separation. The image embodied in the photograph or art is only reproduced in the color separation and the photograph or art is used as an aid in producing the color separation. Since the advertising agency sells the photograph and art prior to such use, and the sale is in California, sales tax applies to the advertising agency's sale of the printing aids. This is true regardless that the sale of the color separation may be exempt from sales tax as a sale in interstate commerce or that the sale or use of the printed matter may qualify for exemption as a printed message or as a component part of a newspaper. 1/9/89.

430.0342 Split Sale. A printer makes a "split sale" of printed matter, where a portion of the printed matter is "ultimately subject to sales tax" under Regulation 1541 and a portion is not. The printer purchases special printing aids for the job, but does not separately itemize charges for these aids when billing the customer. The printer owes sales tax on its selling price of the special printing aids, which is the amount the printer paid for the special printing aids or their components. If the printer reports tax on the sale of the printed matter that is equal to or greater than the tax due on the sale of the special printing aids, no further tax is due. If the tax due on the sale of the special printing aid is equal to or greater than the tax due on the sale of the printed matter, no further tax is due beyond the tax due on the sale of the special printing aids. 08/21/2000. (2001-2).

430.0344 Title Clause on Photographs. After having signed an agreement with its customer, containing a passage of title clause, an advertising agency purchases a photograph under its resale certificate. Assuming that, under the terms of the agreement, the ad agency transfers title to the photograph to its customer prior to use, the sale of the photograph to the agency is nontaxable. Tax applies to the agency's retail sale of the photograph to the customer.

If the agency purchases a photograph under its resale certificate and title does not pass to the customer, the exercise of any right or power over the photograph other than the sale of the photograph, is a use of the photograph and the agency would owe use tax on the purchase price of the photograph. 3/30/93.

430.0344.5 Transfer of Artwork for Reproduction Purposes. Corporation B purchases original artwork and issues resale certificates to sellers. Under the purchase agreements, B has all rights and interest in the artwork, including reproduction and licensing rights. B then transfers possession of the artwork to

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Corporation A which uses the artwork to make reproductions. After Corporation A has finished using the artwork for making the reproductions, it returns the artwork and pays B.

Under this scenario, B is leasing the artwork to A. The lease is a continuing sale and purchase since B issued a resale certificate when it purchased the artwork, and B must collect and pay use tax measured by the amount of consideration it receives from A. This includes all the amounts B receives from A under the transaction, whether it is referred to as royalties or licensing fees, and whether it is paid as a lump sum, periodically or based on the number of reproductions sold.

If Corporation B photographs the original artwork and sells the negative to A, who uses the negative to make reproductions, B has made a taxable use of the artwork and must pay use tax measured by its purchase price. B has also made a sale of the negative to A and must pay sales tax on the sale. The gross receipts subject to tax includes all the consideration received from Corporation A, no matter what label is given to such amount (i.e., royalties, licensing fees, etc.). 1/20/93.

(c) **COMPOSITION; TYPOGRAPHY; “REPRODUCTION PROOFS;”
PASTE-UPS.**

430.0350 Composed Type and Reproduction Proofs. The product of a photocomposition machine, consisting of words arranged into sentences and paragraphs on film, is cut and assembled into a product which is the equivalent of a locked up chase of type produced by the hot type method, as, for example, a page of a book or a complete advertisement with headlines, but not including artwork. The cut and assembled product qualifies as composed type and a direct copy of it qualifies as a reproduction proof. However, a copy of a copy of composed type, even though made to remove defects in the first copy, does not qualify as a reproduction proof. 4/10/79.

430.0360 Composed Type or Reproduction Proofs, Fabrication and Transfer of. A person who uses an IBM composer to type copy, who sometimes sets the “display head” on a Headliner machine and pastes that on the copy, and who also rules forms and places them in the composer to type in the small headings, and who transfers his product to a printer who photographs it to make a plate for use in printing, occupies the status of a typographer who is fabricating and transferring composed type or reproduction proofs for use in the preparation of printed matter and his charges are not taxable. 11/21/68.

430.0370 Computer Tape. The transfer of computer tape in computer language as distinguished from “human readable form” is not within the exclusion of Section 6010.3 as “composed type.” 12/23/76.

430.0375.150 Direct Output Typography. Charges for reproduction proofs directly off the typesetting machine which are given to the customer are not taxable. 11/22/88.

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430.0377 **Illustrations.** A graphic artist does various illustrations including: (1) for a print ad; (2) for an article for a trade magazine; (3) for the cover and interior of a book; (4) for a greeting card company; and (5) for the state of California.

Retail sales of illustrations in this state is subject to sales tax. Even when the graphic artist retains title to the original illustration, tax applies to the lease of the illustration. 2/24/92.

430.0379 **Out-of-State Preparation of Camera-Ready Art and Paste-Ups.** A California publisher purchases typography, camera ready art, and paste-ups for use in publishing books. Since all of the typography includes artwork, its transfer is subject to tax unless otherwise exempt. These items are purchased from both instate and out-of-state sources. After review of the products in California, they are sent by the publisher to out-of-state printers for use.

Purchases from out-of-state retailers are not subject to tax pursuant to section 6009.1 if they are not used in California and are shipped out of state for use solely outside of California. Sales by California retailers are generally subject to sales tax since they are delivered in California. However, in some cases the property sold by a California retailer is sent to the publisher and then returned to the California retailer by the publisher for last minute changes. The property is then shipped by the retailer to the out-of-state printer pursuant to the contract of sale. Under these circumstances, the sale by the California retailer is exempt from tax as an interstate sale. The temporary transfer to the publisher for approval would not negate the exemption. 3/11/82.

430.0380 **Paste-Ups.** "Paste-ups" in which reproduction proofs are added to illustrations to create finished art are subject to tax measured by the sale price of the finished art, including any part of the sale price attributable to typography. 8/11/80.

430.0381 **"Paste-Ups."** A small typography shop does no printing, only cold type composition. Occasionally, a customer will ask for a "paste-up" of typed matter, i.e., type is produced by phototypesetting and affixed to pasteboard by an adhesive wax. Examples would be business cards, letterheads, envelopes, etc. These "paste-ups" contain no artwork.

These items constitute typography or reproduction proofs and do not constitute taxable paste-ups. Tax does not apply to cold type composition, including what may be characterized as "page make-up," provided it does not include artwork. 10/3/78.

430.0386 **Paste-Ups by Independent Contractor.** A publisher of a weekly newspaper which is distributed without charge hires an independent contractor to paste up an editorial and advertising copy.

When an independent contractor is hired to work on the production of a paste-up which consist of typed matter and illustrations or other artwork, the person performs taxable fabrication labor under section 6006(b). The paste-up is a manufacturing aid used to produce the newspaper. Therefore, the independent contractor's charges are subject to sales tax. 1/7/94.

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430.0400 **Photographs of Paste-Up.** A newspaper makes a page paste-up, consisting of photographs and typography, and delivers it to a photographer, who takes a photograph of the paste-up and delivers both to the newspaper. The photograph is used by the newspaper for making a plate to print a page in the newspaper. The photographer is regarded as making a retail sale of tangible personal property and tax applies to his gross receipts. 3/8/67.

430.0406 **Photostat.** A small typography shop occasionally finds it necessary to have a photostat made of typed matter (photo composition type) by a local camera shop. The camera shots include no artwork and are used to make the type fit the customers' specifications. Since the customers want to know what the actual typography charge is apart from the camera work, the camera work is listed separately on the invoice.

The photostat would qualify as either "composite type or reproduction proof" and the charge made by the typography shop to the customers would be nontaxable without regard to the manner of billing. However, tax would apply to the charges made by the camera shop for the photostats. The fabrication and transfer of the photostat by the camera shop does not qualify as a transfer of typography. The sale by the camera shop is a retail sale since the subsequent transfer of the photostat by the typography shop to the customer is not a "sale" transaction. 4/9/79.

430.0410 **Product Bar Code.** A product bar code (UPC symbol) will not be regarded as artwork for purposes of Regulation 1541. The transfer by a typographer of composed type combined with a product bar code is a nontaxable transfer of typography. 8/31/90.

430.0440 **Reproduction Proofs.** If the typographer actually sells the photostats, engravings, etc., after he has used them in the production of typography, his sale is a retail sale unless his customer will resell them before making any use of them and the tax will be applicable to the typographers gross receipts. If . . . however . . . the cost of the photostats and engravings is merely a part of the charge for the setting of the type or making up the form from which reproduction proofs are made, delivering only the reproduction proofs and not selling the photostats and engravings, his gross receipts would not be taxable. It is immaterial whether the proof consists of black ink on white paper or white ink on black paper.

. . . If a photostat of a reproduction proof is made and title to the photostat is transferred to the customer, the tax is applicable to the total charge made for the furnishing of the photostat of the reproduction proof. The photostat is not a "reproduction proof." 5/16/50.

430.0460 **Reproduction Proofs—Art Work and Musical Notations.** The sale of reproduction proofs produced by a music typesetter is subject to the sales tax on tangible personal property. Although reproduction proofs of composed type are generally exempt from sales tax, reproduction proofs of art work and musical notations are not exempt. 3/23/70.

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430.0464 Reproduction Proofs and Typography. Section 6010.3 of the Revenue and Taxation Codes excludes from the definitions of “sale” and “purchase” the transfer of reproduction proofs or impressed mats to a printer or publisher. The statute does not specify that the transferor be a typographer. Thus, a person who purchases a reproduction proof from a typographer, adds a mark-on, and sells the proof to a printer or publisher enjoys the exclusion contained in section 6010.3. 6/12/85.

430.0485 Type—Enlarged and Reduced. A typographer who does not have the font size desired by a customer, prints a copy of the type from its computer, but in a size other than that requested by the customer. The typographer then enlarges or reduces that copy, via a stat camera, to the font size desired by the customer.

The composition of type is not complete until the typographer has complied with the requirements of the typography contract, to supply composed typography of the desired font size. Thus, enlarging or reducing type in this manner to the desired font size, qualifies as nontaxable typography. 6/23/93.

430.0487 Typesetter Subcontracting Printing. A typesetter occasionally purchases printing for resale to his customer as a convenience to the customer. He bills the customer separately for the typesetting and the printing. Tax applies to the total charge to the customer. If the customer cancels the printing order and merely takes possession of the typography, tax does not apply. 1/25/84.

430.0498 Typography and Proofs. Charges for reproduction proofs provided to the customer by means of diffusion transfers, negatives, or prints are not taxable. 11/22/88.

430.0500 Typography and Reproduction Proofs, Advertising Agencies. Typography expenses billed to clients of advertising agencies for reproduction proofs used in paste-ups are subject to tax. Paste-ups are finished art work produced for use of the client and are taxable under Regulation 1540. 12/21/65.

430.0505 Typography and Transfer of Plate. “Typography” is transferred to the customer in the form of “final film” (commonly called a flat). The flat is used in a plate machine to produce the printing plate that will be used in the printing process. The flat does not qualify as typography. A flat is an additional step beyond mere composition of type. Thus, the retail sale of flats are subject to tax without any deduction on account of the cost or expense of typography (Regulation 1541 (f)(5)). 6/23/93.

430.0510 Universal Product Code. A Universal Product Code symbol combined with typesetting is considered to be nontaxable typography. The UPC is not considered artwork. 8/31/90.

430.0550 Graphic Design for a Newsletter. A taxpayer generates camera-ready art for a newsletter for a customer. A lump-sum charge is made for typeset and layout of articles, design of new advertising, and redesign of previous advertisements. A separate charge is made for the actual camera-ready output which the taxpayer purchases.

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Tax applies to the transfer of typed matter combined with artwork in the form of a paste-up, mechanical, assembly, computer disk or camera-ready copy. When a taxable sale of camera-ready art is made, the entire charge is taxable including any portion of the charge which is attributable to typography whether or not that charge is separately stated. 1/25/95.

(d) SIGNS, SHOWCARDS AND POSTERS**432.0000 PRINTED SALES MESSAGES—Regulation 1541.5.**

432.0001 Advertising Brochures. A publishing company markets its products by mailing advertising brochures to nurses and other health professionals. The company has an in-house printing and mailing division at the same location as the publishing division. The company prints some of its advertising brochures and then mails the brochures from its mailing house division to persons who become the owners of the brochures at no cost. In addition, some brochures printed by printers other than this company are delivered to and distributed by this company's in-house mailing division.

There has not been a sale of brochures in the transaction where the company prints and mails the brochures from its own in-house printing and mailing divisions since such a transaction between related entities does not constitute a sale. Since there has not been a sale of brochures, the exemption for printed sales messages is not available for this company. Further, the printed sales message exemption is not available where an outside printer (seller) sends the brochures to the in-house mailing division which is part of the purchasing company and not the company's agent. Since the brochures are delivered to the purchaser, the printed sales message exemption is not available to the seller. 4/21/88.

432.0002 Advertising Campaigns. Taxpayer is in the business of producing and selling advertising campaigns designed specifically for the tenants of a shopping center. If the taxpayer's proposal is accepted by the shopping center's marketing director, the taxpayer produces the agreed upon campaign. Each merchant in the mall is contacted by the taxpayer to determine the size and content of the merchant's advertisement in the catalog. The taxpayer subcontracts all the production elements, including the printing. Of the catalogs printed, 98% are shipped by the printer directly to the merchants' potential customers via U.S. Mail or common carrier. The other 2% are shipped to the mall.

The printer's sale of the catalogs to the taxpayer is a sale for resale, and the taxpayer should issue a resale certificate to the printer. The taxpayer's sale to the mall is a retail sale of the catalogs and other advertising materials which may be included in the campaign. The gross receipts from this sale are the total amounts paid by the merchant/advertisers plus the amount paid by the mall.

Since the catalogs sold to the mall were printed to the special order of the customer, those which were shipped by U.S. Mail or common carrier, by the printer to a person other than the mall, at no charge to the recipient, are exempt from tax pursuant to Regulation 1541.5, "Printed Sales Messages." The mall

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should supply the taxpayer with an exemption certificate as specified in that Regulation. Those catalogs shipped to the mall are subject to sales tax. 10/31/90.

432.0002.150 Advertising Circulars. A taxpayer is in the business of providing advertising circulars to supermarkets. The merchants call or mail in the advertising copy and the taxpayer produces the circular in its entirety. It also performs the affixing of mailing labels and delivery to the store and/or the United States Post Office. Given this information, tax applies as follows:

(1) Circulars that are delivered directly to and mailed by the United States Post Office: If the taxpayer delivers the circulars directly to the U.S. Post Office to mail the circulars to the customers of the merchants, the exemption for printed sales messages would apply. However, if the taxpayer delivers the circulars to the Post Office for mailing to the merchants, the exemption would not apply because the delivery would not be “to any other person at no cost to that person who becomes the owner thereof.”

(2) If the taxpayer delivers the circulars to the customer (merchant) who, in turn, delivers the circulars to the U.S. Post Office, the exemption would not apply.

(3) Circulars that are handed out by a distributor on a door to door basis: The sale qualifies for the exemption if the taxpayer delivers the circulars to a distributor who qualifies as a common carrier for distribution to the prospective customers of the merchants.

(4) Circulars that are inserted in a newspaper: Since advertising circulars are considered as component parts of a newspaper when attached to or inserted in, and distributed with the newspaper, the exemption provided under section 6362 applies. Accordingly, the sales of circulars that are for insertion in a newspaper are exempt whether or not the circular is delivered to the merchant. 2/27/87. (Am. 2001-3).

(See Regulation 1590 for application of tax to circulars inserted in newspapers for periods after 7/15/91.)

432.0003 Advertising Layouts. Advertising layouts are not regarded as printed sales messages and sales of such layouts do not qualify for exemption. 2/18/94.

432.0005 Annual Reports and Newsletters as Printed Sales Message. An organization publishes an annual report once a year and a newsletter twice a year. The publications serve both as a public record of the work of the organization and also as “sales” pieces to encourage prospective donors and grantees to take advantage of the services provided by the organization. The mailing lists for the publications consist of (1) current donors, (2) donor prospects, (3) foundation friends, e.g. past trustees and staff, (4) professional advisors, such as attorneys, etc., (5) current and prospective grantees, and (6) the general public.

The term “printed sales messages” does not include fund-raising materials; therefore, these publications do not qualify for the exemption. Since the annual report and the newsletters are not “regularly issued at regular intervals not

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exceeding three months,” the sale to the organization of the annual report and the newsletters do not qualify for the exemptions for sales of newspapers or periodicals. 1/7/93.

- 432.0008 **Apartment Owners Review Publication.** Apartment Owners Review is described as being produced for a specific client. It consists exclusively of advertisements and may include an article which publicizes services provided by the client. The publication is delivered directly to the U.S. Post Office by a mailing service for redelivery to the recipients unsolicited and free of charge.

This publication does not qualify as a “periodical” under Regulation 1590(a)(2), it qualifies as a printed sales message for purposes of Regulation 1541.5. 12/20/91.

- 432.0010 **Art Incorporated into Printed Sales Message.** Where an agency contracts to sell camera-ready art as well as a sale of a printed sales message, tax applies to the total gross receipts of the sale of camera-ready art including charges for consultation and research and charges for supervision related solely to the production of camera-ready art.

If the contract is solely for printed sales messages which qualify for the exemption under Regulation 1541.5, none of the charges for consultation, research or supervision are subject to tax. 10/14/93.

- 432.0012.300 **Bill Inserts.** A printer prints loose leaflets (bill inserts) for a utility company which are sent with the monthly bills. The printer believes that the monthly bill inserts qualify either as a periodical or printed sales messages. The printer states that the bill inserts appear at stated intervals (monthly), contain news or information of general interest to the public, or to some particular organization or group of persons (utility company’s subscribers), and each monthly issue bears a relationship to a prior or subsequent issue in respect to continuity of literary character or similarity of subject matter and there is some connection between the different issues of the series. In addition, the items are printed to the specific order of the customer, the items are mailed by the U.S. Postal Service, and the items are received by the subscribers at no cost to them. The printer also claims that it makes no difference whether there is an independent mailer of the item.

The bill inserts do not meet the definition of a periodical because they constitute handbills. The items are in the nature of notices and/or advertised services or pertaining to PUC regulations, etc. They are small, one-page items and are not printed at stated intervals, although they generally have a printing date on the back. Even if the bill inserts were not considered handbills, they are publications in which the advertising exceeds 90% of the printed area of the entire issue. Additionally, the PUC-required notices do not qualify because each notice is independent, and not one of a series of issues of the same publication.

The bill inserts do not meet the requirement of the printed sales messages because they were delivered by a nonqualifying method. The bill inserts were delivered to the purchaser, the utility company, not to the final destination or to

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a mailing house. The PUC-required notices are not printed sales messages because they are not printed for the principal purpose of advertising goods or services. 2/4/93.

432.0012.500 Book Covers. Book covers which contain advertising for businesses and which are provided to schools free of charge do not qualify as printed sales messages. Book covers are not a form listed in section 6379.5 (i.e., catalogs, letters, circulars, brochures, and pamphlets) and, thus, do not qualify as printed sales messages, even though they meet the other requirements of section 6379.5. 7/8/96.

432.0012.875 Brochure—50% Advertising. A brochure consists of 48 pages (which include a four-page golf score card). Of those 48 pages, 24 consist of advertising and the remaining 24 pages are informational. Since the brochure does not consist of over 50 percent advertising, the brochure is not for the principal purpose of advertising and, therefore, it does not qualify as a printed sales message within the meaning of Regulation 1541.5(a)(1). Thus, the exemption provided by section 6379.5 does not apply. 11/2/93.

432.0013 Brochure Seeking Donations. A brochure seeking contributions from the person receiving it does not qualify as a printed sales message, and tax is applicable to the sale to the purchaser. 6/6/91.

432.0015 Brochures Which Include Over 90 Percent Advertising. An advertising brochure containing entries from many advertisers, published every month in the same format, is not an exempt periodical because over 90% of the printed area contains advertising material. The brochure does, however, meet the criteria for exemption for printed sales message when the brochures are picked up by a distribution house or common carrier and distributed to others, including some of the advertisers, at no charge.

Although the advertisers pay the publisher for the right to be included in the brochure, none of the amount can be considered to be payment for the brochures because the advertisers pay the same fee regardless of whether they choose to receive copies of the brochure, or choose not to receive copies of the brochures. 12/20/90.

432.0017 Bulk Rate Permit. The printed sales message exemption does not require the seller to maintain or use its own bulk rate permit when mailing printed sales messages through the U.S. Postal Service on behalf of a client. A seller may qualify for the printed sales message exemption when using its client's bulk rate permit provided the sale satisfies the requirements of the exemption. 3/2/95.

432.0018 Calendars. Calendars are specifically excluded from the definition of "printed sales message" by Regulation 1541.5(a)(1). The words "unless they meet the principal purpose of advertising or promoting goods and services" modifies only the word "directories" and not the words preceding it. This conclusion is supported by the Board's Notice to Interested Parties dated 8/10/87, that specifies the limitation of the amendment to Regulation 1541.5. 3/29/90.

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432.0019 California State University Publication. A California state university publishes a publication every other Monday except during academic recesses. The publication contains a list of students who are scholarship recipients which comprises 75 percent of the written portion of the publication. The rest of the written portion consists of a calendar of upcoming events including student orientation events and children's sports camps.

Since the publication consists primarily of the list and calendar mentioned above, it is not printed for the principal purpose of advertising or promoting goods or services. Therefore, it is not a printed sales message and the printer's sale to the university is not exempt under section 6379.5.

However, since the publication is issued at least four times per year but not more than 60 times per year and contains information of general interest to the students of the university, it may qualify as a periodical. 9/29/94

432.0020 Campaign Literature. A company is in the business of handling political campaigns for candidates and issues in California election contests. A contract is signed indicating that the company is an agent in the purchase of brochures and other materials. The company provides consulting and planning services in setting up the campaign and deals with the printer in the procurement of brochures and mailing pieces. The company prepares preliminary art, some final mechanical art, and some computer design which is used in the production of brochures. When brochures are finished the company bills the candidate for the brochures separately than for other consulting services, but does not usually specify on the invoice the exact printer's charge nor does it routinely show the markup separately.

The company claims that the true object of the contract is the performance of consultant services, that the value of simple artwork done by the in-house artist is minimal, and that elaborate productions are handled by outside suppliers of art and mechanicals who charge sales tax. The company also provides creative concept copyrighting and graphic design with in-house staff for other direct-mail-product-only accounts and understands that there are "printed sales messages" which are exempt from tax.

Apparently the company, by signing a contract "indicating that the company is an agent", wishes to avail itself of the procedure provided in Regulation 1540(a)(2)(A) to act as agent for the client. Since the company both marks up the cost of the brochures and does not separately invoice the reimbursement for purchasing the property, it does not acquire the brochures as an agent on behalf of the candidate. The company makes a taxable sale of the brochure and artwork to the client.

The true object of the contract is not the performance of consulting services. The artwork or brochures are custom made properties and have value as items of tangible personal property, the sale of which is subject to sales tax. The sales of the brochures are not exempt sales of printed sales messages. "Campaign literature and other fund-raising materials" are specifically excluded from the term "printed sales messages." 4/15/92.

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432.0021 Cash Register Tapes. A printer's client markets advertising space for local business on cash register tapes used in various stores. The client supplies the cash register tape, at no cost, to the stores. The client purchases the property tax-paid, designs the advertisements to the customer's specifications, and distributes the cash register tapes to the various stores.

Regulation 1541.5 provides that "printed sales messages" do not include "cash register tapes". The phrase "unless they meet the principal purpose of advertising or promoting goods or services" in Regulation 1541.5(a)(1) relates only to directories. At the request of publishers of certain directories, the Board added to Regulation 1541.5 the words: "or directories unless they meet the principal purpose of advertising or promoting goods or services" to allow certain directories (e.g. "Yellow Pages") to qualify as printed sales messages when the principal purpose of the publication of the directories was to advertise or promote goods or services. 3/18/92.

432.0021.800 Catalog of Summer Programs. An organization has a catalog printed of its summer program. The catalog gives a short description of each program and the dates and prices of the programs. The inside cover of the catalog is an order form. Based on the information contained in the catalog, it qualifies as a "printed sales message as defined in Regulation 1541.5(a)(1). 5/14/97.

432.0022 Catalogs. A wholesale and resale distributor of tangible personal property with offices in California has enough catalogs for several mailings printed to its special order by a non-California printer. The catalog describes products and prices and is regularly sent to customers throughout the country, without charge. A mailing house usually ships the catalogs by common carrier or postal service.

The catalogs are delivered in three different ways:

- (1) Catalogs are delivered by the printer to the mailing house for distribution and shipping in the next mailing to the company's customers.
- (2) Catalogs are delivered by the printer to the company for distribution directly to customers.
- (3) Catalogs, which will be held until a future "regular interval" mailing time comes, are shipped to the company's warehouse where they remain on the pallets until the mailing house sends a truck to pick them up for the next mailing.

To be eligible for the exemption for sales of "printed sales messages", the delivery of the property must be to "any other person" without first being delivered to the purchaser. Thus, sales of catalogs delivered in example 1 are exempt from tax, but sales of catalogs delivered in examples 2 and 3 are subject to tax. 8/19/93.

432.0023 City Convention Center Guide—Printed Sales Message. The publisher of City Convention Center Guide contracts with an outside printer to print the Guide. The Guide is shipped by common carrier to a van lines warehouse who ships the guides to the Convention Center. A delivery service

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distributes the Guide to the event participants, and also will pick up the Guide at the van lines warehouse for redelivery to various motels and hotels.

After reviewing the contract, it was concluded that the transaction is not a sale by the publisher to the Convention Center, but rather that the publisher is the consumer of the Guide. The publisher publishes the Guide on its own behalf and does not appear to be responsible for providing any Guide to the Convention Center or to any other persons on behalf of the Convention Center. If the printer ships the Guide directly to the van lines and none of the Guide are delivered to the publisher, and the delivery service is a separate person from the publisher, the sale of the printing to the publisher qualifies for the exemption from sales tax pursuant to Section 6379.5, Printed Sales Message. 2/7/92.

432.0023.5 College Catalog. In considering whether a college catalog or class schedule falls within the provisions of the printed sales message exemption it must contain the following:

- (1) The course offerings must be sufficiently detailed to be considered a sales message (e.g., course name, description of course, instructor, date and time of classes).
- (2) The publication must be substantially comprised of these sales messages.
- (3) An application of registration must be included.
- (4) Fees for the majority of the courses offered must be specified in the schedule of classes. 2/28/91.

432.0023.600 Common Carrier Selling Printed Sales Messages. A common carrier delivers telephone directories usually once a year. It also inventories directories at satellite warehouses for delivery to new telephone customers. It proposes to insert printed sales messages which it sells to advertisers in the telephone books. Initially, it plans to print the messages it sells, but in the future it may contract out the printing.

The requirement for exemption in Regulation 1541.5(b) that a printed sales message be delivered by a common carrier is not met when the common carrier is either the purchaser or the seller of the printed sales message. The requirement may be met if a portion of the transportation is by another carrier or the postal service, either to the warehouse or to the customer or both (1541.5(b)(5)). In any event, the purchaser may not gain possession of the printed sales messages at any time. 4/27/94.

432.0023.650 Contest Blanks and Customer Comment Forms. Among the printed items which do not qualify as printed sales messages are entry blanks for contest drawings and forms requesting comments from customers. Envelopes in which printed sales messages will be enclosed are exempt when sold with the printed sales message for shipment or delivery. 5/24/89.

432.0023.675 Contract Carriers and Sellers Facilities. To qualify for exemption, the printed sales messages must be delivered by the seller to a common carrier or the U.S. Postal Service for delivery. The exemption does not apply if the seller delivers the printed sales messages via a contract carrier. The

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exemption also does not apply if the seller or the purchaser is a common carrier and makes delivery solely via its own facilities to the recipient. 8/4/94.

- 432.0023.700 **Coupon Books.** A firm designs and publishes a book of coupons. After receiving orders from clients to prepare a coupon, it prepares a rough layout of the coupon, obtains approval from clients, and then has a printer print pages containing coupons from several clients. The printer takes the finished coupon books to a carrier who takes the books to a mailing house for addressing. The mailing house then takes the coupon books to the U.S. Postal Service for delivery to households by zip code. The printer's sale is to the firm.

Since coupon books are printed for the principal purpose of advertising or promoting goods or services, they qualify as printed sales messages. If the households receive the coupon books free of charge, the requirements of section 6379.5 have been met and the printer's sales of the coupon books are exempt from sales tax. 9/20/94.

- 432.0024 **Customized Circulars.** Members of a hardware cooperative organization are provided with a rough layout of an advertising circular along with inserts that may be substituted for the items included in the layout. Members use the optional inserts to customize the circular, making such changes as they wish with respect to products featured, prices, additional pages, etc.

The printer is instructed to ship the circulars to the customer's store, a newspaper or a mailing house. Even though the circulars have been printed to the special order of the customer, and the contents meet requirements of the definition of "printed sales messages", those that are shipped to the customer's store are taxable, except for those subsequently forwarded to a newspaper publisher for inclusion and distribution with the newspaper. Those shipped by the printer directly to a newspaper are also not taxable. Conversely, circulars delivered to the customer's store and then forwarded to a mailing house for redelivery to any other person, who becomes the owner at no cost, are taxable. Those circulars delivered directly by the printer to a mailing house acting as agent of the customer are not taxable. 8/27/90.

- 432.0028 **Developmental Software as "Printed Sales Message".** Before a software company, who is in the business of selling software for resale, actually mass produces a product, the company does extensive developing by sending early versions of the software to approximately 2,000 persons at no charge to the recipient. The recipients use the free software and point out any "bugs" to the software company.

The exemption for "printed sales messages" would not apply to the sale of the computer software. Tax applies to the sale of the disks, the disk duplicating services and the supporting manuals to the software company. 5/3/93.

- 432.0029 **Delivery Made by Printer.** If a printer delivers the printed sales messages to the purchaser, the sale is subject to sales tax even though the purchaser may immediately deliver the property to a mailing house. 12/20/91.

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432.0029.5 **Delivery to Purchaser.** A printer delivers 10% of a printed sales message order to the customer. This is the percentage of the original mailing which it believes will be returned by the post office with corrected addresses.

Approximately 30–60 days later, the customer will redeliver this 10% to the mailing house for subsequent mailing to the corrected addresses. Ten percent of the order is subject to tax. In order for the exemption for printed sales message to apply the printed matter cannot be delivered to the customer. 8/1/88.

432.0030 **Directories.** A directory provides only informational listings of the name, address and specialty of medical providers. The listings do not advertise or promote the sale of goods or services. The directory does not qualify as a “printed sales message”, Section 6379.5. 5/26/93.

432.0031 **Directories.** A directory consisting of 432 pages of directory listings and 276 pages of advertising, is produced by the Associated Students and distributed by an outside carrier.

Since not more than 50 percent of the printed area is advertising or promoting goods or services, the directory does not qualify as a “printed sales message”. Sales tax applies to the sale of the directory to the association in this state. 12/8/92.

432.0032 **Directories.** Although generally excluded from the definition of “printed sales messages”, directories which meet the principal purpose of advertising or promoting goods and services are included. The printer of the pages of such directories delivers the pages to a bindery via a carrier for further processing. The bindery binds the directories and affixes the mailing labels. The directories are then either sent by the bindery to the post office for mailing to recipients who receive them at no cost or the purchaser picks them up. The printer’s sales of directory pages are taxable if the purchaser picks up the bound directories from the bindery. The printer’s sales of the directory pages are exempt if the directories are mailed or delivered by the bindery or its agent through the U.S. Postal Service or common carrier and received by the recipient at no cost.

The bindery is performing fabrication which constitutes a sale. That sale is taxable when the customer picks up the directories, and is exempt if the directories are mailed or delivered by the bindery or its agent through the U.S. Postal Service or common carrier and is received by the recipient at no cost. 4/26/90.

432.0032.400 **Directory.** A directory consists of 208 pages listing names, addresses, and specialties of medical service providers who have contracted with a company. The contracted providers and health plan enrollees depend on the directory in making referrals within the network.

An exemption is provided for catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services. The directory provides only informational listings that do not advertise or promote the sale of goods or services and does not qualify for the exemption as a “printed sales message.” 5/26/93.

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432.0033 Direct Mail Advertising. A company sells direct mail advertising to automotive dealers in California and throughout the United States. The mailings of letters are custom printed for the purchaser and are received by the recipient at no cost to them. For out-of-town customers, the mailings are shipped to one of the customer's employees for mailing at their local post office. The mailings are pre-addressed, stamped and sealed. The exemption provided for "printed sales messages" (Section 6379.5) is not available when the mailing is delivered to the purchaser. Since delivery was made to the purchaser, tax applies to the charges made by the printer unless otherwise exempted.

The other relevant exemption is for sales in interstate commerce. The sales are exempt when the contract requires the packages of printed sales messages to be shipped, and they are in fact shipped to the out-of-state purchasers by the postal service. 10/3/90.

432.0033.600 Disk, Diskette, and Videotape. Sales messages delivered free to consumers on disk, diskette, and videotape do not come within the printed sales message exemption. The definition of printed sales messages under section 6379.5 does not include such items as disks, diskettes and videotapes. Accordingly, the tax applies to the sale of these items for the purpose of delivering sales messages. 8/01/96.

432.0034 Distribution by a Separate Division. The publishing division of a taxpayer purchases telephone directories from a printer and directs that the directories be delivered by common carrier to the distribution division of the taxpayer. The fact that delivery is by common carrier is not sufficient to make the sale exempt. For the sale to be exempt, the directories would have to be delivered to a separate entity which is engaged in business as a "mailing house." Although that separate entity could be related, such as a subsidiary, it must be a person other than the purchaser, which includes all its divisions. 1/4/94.

432.0035 Double Postcards. A double postcard consists of a single sheet of heavy paper stock 8½" x 6". One half of the card contains a printed sales message on both sides of the card. The other half of the card contains a reply postcard with a printed sales message on the back of it that states in part "if you like your sample copy, honor our \$19.97 invoice to get 11 more issues—12 in all."

Although the reply postcard portion is not a printed sales message, the described document is printed for the principal purpose of advertising or promoting the sales of goods and qualifies as a printed sales message. If the printed sales message is otherwise sold and delivered in accordance with Regulation 1541.5, the sale is exempt from tax. 5/15/92.

432.0037 Education Brochures. A brochure which promotes a seminar by illustrating the educational offerings, speakers, itinerary, and a registration form and which is printed to the special order of the purchaser will qualify for the 'printed sales messages' exemption provided it is mailed or delivered by the seller (printer), the seller's agent, or mailing house at no cost to the recipients who become the owners. 6/13/88.

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432.0039 Envelopes Used as Containers. In order for the sale of envelopes used as containers for printed sales messages to be exempt from tax, the envelopes must be sold to the “persons” who place the printed sales messages in the envelopes and sell the printed sales messages together with the envelopes. Accordingly, sales of envelopes to a mailing house which will use the envelopes to mail “printed sales messages” are subject to tax since the mailing house is not the seller of the “printed sales message.” 1/27/88.

432.0041 Exemption Certificate—Advertising Agencies. An exemption certificate as specified by Regulation 1541.5(c) should not be issued by an advertising agency in its own name when purchasing printed sales messages from a printer. However, the advertising agency could issue the exemption certificate if it establishes that it is acting as an agent for its client in the particular purchase. Specifically, it must clearly disclose to the printer that it is acting as agent for its client. It must obtain, prior to the purchase, and retain written evidence of the agent status with its client. The price billed to its client must be the same as the amount charged by the printer exclusive of any agency fee.

The same rules apply to issuing an exemption certificate as those which apply to a resale certificate. That is, the advertising agency that purchases tangible personal property on behalf of its client may not issue an exemption certificate in its own name to the supplier. It will be presumed that an advertising agency who issues an exemption certificate to its suppliers is purchasing the property on its own behalf and is not acting as an agent for its client. (Regulation 1540(a)(2)(A).)

In addition, the printed sales messages must be delivered in accordance with the requirements in Regulation 1541.5(b)(2) and (3) for the sales to be exempt from the sales tax. 2/27/96.

432.0042 Exemption Certificate Issued by Customer. An exemption certificate, accepted in good faith, relieves the seller from liability from sales tax for sales of printed sales messages delivered in accordance with subdivisions (b)(2) and (b)(3) of Regulation 1541.5. However, if the seller fails to deliver the printed sales message in such a manner and delivers the printed material to the purchaser or the purchaser’s agent, the seller would be subject to the sales tax because the seller did not comply with the delivery requirement stated in the exemption certificate. (Regulation 1541.5(c)(3).) 2/24/94.

432.0042.750 Fabric Sample Books. Sample books which contain cuts of fabric do not qualify as printed sales messages merely because they include some incidental printing. Any printing on such sample books is ancillary to the fabric, which is the primary marketing tool. That is, the sample books do not consist substantially of printed sales messages for goods and services, but rather consist substantially of samples. 5/4/95.

432.0042.800 Financial Prospectuses. Financial prospectuses meet the definition of printed sales messages and are exempt if they are shipped by the seller or a mailing house acting on behalf of the purchaser to persons who acquire them at no cost. It makes no difference if the third party recipient is an underwriter, broker/dealer or investor.

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Any prospectuses which the mailing house retains for possible future distribution, are subject to tax. The mailing house is not acting as an agent for purposes of mailing the prospectus. Rather, it is storing the prospectus for an undetermined period of time on behalf of the purchaser.

Prospectuses mailed by the mailing house to field agents of the purchaser, also do not qualify for the printed sales message exemption since the representatives are agents or employees of the purchaser. 3/29/89.

- 432.0043 **Folders Used as Containers.** Folders preprinted with a company logo together with the name of a product which are used as containers to insert "printed sales messages," qualify as a part of the printed sales message.

However, if the folders are sold independently they do not so qualify. Under these circumstances, it is not ". . . a container . . . sold with printed sales messages for shipment or delivery . . ." pursuant to Regulation 1541.5(b)(7). 1/8/90.

- 432.0044 **Food Tray (Carrier) Used at Sporting Events, etc.** A firm produces (through an outside manufacturer) food carriers which consist of a cup carrier and an integrated food tray. The firm will contact a potential advertiser to offer advertising exposure on the food carrier. For instance, a company will purchase one season's advertising at a major baseball stadium. The finished food carrier with the company's advertising on it are delivered to the stadium and given to the concessionaire free of charge. The concessionaire gives them to fans who purchase multiple food items. Once the season is completed, the firm removes the unused food trays from the stadium in favor of the advertiser for the next season. Neither the advertiser nor the concessionaire has the right to use or dispose of the unused units without authorization of the firm.

If the firm is producing the carriers on its own behalf and is merely selling advertising space to a number of clients, the firm would be the consumer of, and tax would apply to the sale to the firm of the carriers. Tax would not apply to the firm's charge for the advertising space. However, in this case, when the firm produces carriers for only one specific advertiser and delivers the carriers to the advertiser or to another person, such as the concessionaire, on behalf of the advertiser, the firm's transaction is a retail sale of the carrier to the advertiser.

This transaction would not qualify for the printed sales message exemption since the exemption is limited by its terms to the sale of "catalogs, letters, circulars, brochures, and pamphlets." The food and drink carriers are not within the type of printed material listed; therefore, the firm's sales of the carrier would not qualify for the exemption. 7/11/96.

- 432.0045 **Franchise Fees.** A magazine franchiser contracts with a printer to print a publication consisting of advertising for homes for sale. The printer delivers the publications to a franchisee.

Since a franchisee of the customer receives the publication, there is an indirect charge made by way of a franchise fee. In such case, sales tax applies to the charge made by the printer because the materials are not received by ". . . any other person at no cost" as required by Regulation 1541.5. 11/26/91.

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432.0050 **Game Cards.** Game cards used in a game sponsored by a soft drink company and a chain of pizza restaurants contain only small logos for each company in the respective upper corners of the cards and a fine print statement that one of the prizes is a soft drink. No other advertising appears on the game cards. The cards cannot be considered printed sales messages since they are not produced for the principal purpose of advertising or promoting goods and services. 4/6/94.

432.0060 **Health Plan Benefits Brochure.** A health maintenance organization's brochures which invite prospective members to join the organization and provide an explanation of benefits and a list of participating physicians to demonstrate the choices available to the prospective members are printed sales messages. 4/29/92; 12/18/97. (Am. M99-1).

432.0061 **Homes for Sale Publication.** An individual sells advertising, comprised of a narrative description of land or homes for sale (the description may be accompanied by a photograph) to realtors. The listings and photographs are consolidated into a publication. The rough layout is sent to a publishing company out of state for final layout and printing. The publication company sends the completed publications to an out-of-state airport where a delivery service picks up the publications and delivers them to various California businesses where the public may pick up a copy for free. The delivery service also delivers some copies to the individual.

The publication is printed to the special order of the customer, printed for the principal purpose of advertising or promoting goods or services, and a portion is delivered by common carrier to businesses where the consuming public becomes owner of the publication free of charge. Therefore, the copies which are distributed to the public are exempt from tax. As to the copies delivered to the individual, the printed sales message exemption does not apply because this transaction does not comply with the delivery requirements of the exemption statute. 6/6/88.

432.0063 **Independent Contractor as Separate Entity.** Taxpayer provides full printing service to a variety of customers. For various business reasons, the majority owners of the printing business form a general partnership trucking firm which will provide common and contract carrier services to taxpayer and others. The trucking entity is engaged to deliver printed sales messages for taxpayer. Deliveries are to certain specified individuals (i.e., homeowners) at no cost to such individuals.

Assuming that the independent contractor (trucking entity) would not qualify as an employee under common law principals as well as Internal Revenue Service Guidelines, the sale of such printed sales messages is exempt from sales tax. 11/21/91.

432.0063.800 **Letters Soliciting Donations.** When the principal purpose of the letters and envelopes printed by the taxpayer is to solicit donations and not to advertise or promote goods or services, they do not qualify for the "printed sales messages" exemption under section 6379.5. 3/17/89.

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432.0063.840 **LifeHelp, Service Request Card.** Because the principal purpose of the LifeHelp circular is to advertise/promote the sale of kits, the circular qualifies as a printed sales message even though the bottom half is an order/request form.

The sale of the circular is exempt if it is printed to the special order of the purchaser and is delivered through the mail or common carrier to any other person at no cost to that person who becomes the owner of the circular. 9/7/93.

432.0064 **Luggage Tags.** A California advertising specialties distributor works with a California advertising agency who has a Utah client who has no contract or “nexus” with California except its contract with the distributor and the agency. The agency ordered luggage tags from the distributor as an agent of its Utah client, who was the purchaser from the distributor. No resale certificate was provided. A portion of the tags were purchased from a California supplier and the remainder of the tags were purchased from out-of-state suppliers. All the tags were shipped to a California mailing house except for a small portion shipped by the California supplier to Utah. The luggage tags were shipped as gifts by the mailing house throughout the United States with less than 5% shipped to California addresses.

First, the luggage tags do not qualify for the printed sales message exemption. The definition of printed sales message is a narrow one, and does not include luggage tags.

The sale of the tags that were shipped by the California supplier directly to Utah pursuant to the contract of sale was an exempt sale of interstate commerce. The sale of the remaining tags that were shipped to the California mailing house are subject to tax since the tags were not shipped out of state by the suppliers pursuant to the contract of sale. Instead, these tags were shipped to the Utah purchaser’s agent, the California mailing house, for use by the Utah purchaser in California. 8/9/93.

432.0064.400 **Magazine Inserts.** High quality four color advertisements are printed for insertion into a magazine to look like an integral part of the magazine. The advertisements are purchased by A and printed by a California printer. The printer delivers the advertisements by common carrier to trade and consumer magazines which are distributed nationwide.

Assuming the inserts are advertisements for the promotion of goods or services, their sales would qualify for the exemption for sales of printed sales messages if they meet all of the criteria set forth in Regulation 1541.5. The printed sales messages are received at “no cost” for purposes of the regulation when they are inserted into a periodical which does not consist entirely of advertising. If the publication only advertises products and a charge is made to the customer, the printed sales message is not provided at “no cost.” 1/5/94.

432.0064.425 **Maps.** A printing company prints maps of specific communities to the special order of a real estate company. The maps are given by the real estate company to potential purchasers of homes in order to help the potential purchasers locate homes for sale in the communities. The maps also contain

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written information about the communities and advertisements for over seventy businesses. The main portion of the map product is devoted to actual maps and written information about the communities. Only a small portion of the map product contains advertisements. Since the map product does not consist of over 50% advertising, it is not for the principal purpose of advertising or promoting the sale of goods and services and, therefore, does not qualify as a printed sales message. 9/24/97. (M98-3).

432.0064.450 Medical Provider Directories. Medical provider directories that list the names of physicians and provide certain information about the physicians, such as office addresses and areas of practice, are not considered as advertising or promoting the sale of goods or services. Therefore, the directories do not qualify as “printed sales messages” and their sales are not exempt from tax under section 6379.5 without regard to whether they are mailed to potential members or to existing members of the HMO. 7/11/95.

432.0064.500 Mutual Fund Prospectus. A mutual fund prospectus is a printed sales message since it is printed for the primary purpose of promoting the sale of goods and services. The sale of the prospectus and the affixed application is exempt from sales tax if it is delivered to a mailing house without the purchaser obtaining possession and is mailed through the United States Postal Service to people who become the owner at no cost to them. 7/31/96.

432.0064.515 Mutual Fund’s Promotional Material. The materials listed below are printed by a California printer and delivered directly by the printer to a fulfillment mail house located in California. These materials are printed to the special order of the customer, the mutual fund. These items are then mailed by the fulfillment house through the United States Postal Service to the customer’s clients and potential clients. There is no cost to clients or potential clients for the receipt of these materials. Thus, the sale of any such items qualifying as printed sales messages are exempt from tax:

(1) A postcard-type of self mailer which describes company’s growth fund. This postage-paid card contains information on both sides promoting the sale of the growth fund. Therefore, it is a printed sales message and its sale is exempt from tax.

(2) Outside envelope with the words “Fund Info” printed on it as well as the name of the fund and return address. If the “outside” envelope is used to package items qualifying as printed sales messages for mailing and it is sold with such items, its sale would satisfy the requirements for the exemption since it would be sold with the printed sales messages for shipment or delivery of the printed sales message. On the other hand, if it is purchased from one source while the printed sales message(s) is purchased from another, its sale would be subject to tax.

(3) A group of pamphlets which is comprised of an annual report dated March 31, 1994, a quarterly report dated June 30, 1994, a semi-annual report dated September 30, 1994, and a quarterly report dated December 31, 1994. The same sequence is followed for the year 1995. Each of these pamphlets are descriptive of the activities regarding the company’s “growth fund.” This group

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of pamphlets consist of statements of financial conditions which provide a “track record” of performance of the growth fund and include disclaimers about future performance. These pamphlets are not “printed sales messages” since their principal purpose is not that of advertising or promoting sales of goods or services. Thus, their sale is taxable unless qualifying for another applicable exemption, such as the exemption for sales of certain periodicals.

These quarterly, semi-annual, and annual reports are reports of the financial activities of the “growth fund” during the period reported and are cumulative in nature providing information in regard to the fund over the span of a year. They contain news or information of general interest to a segment of the public. Although there is a change in the title of successive issues to relate to the period for which it is issued, each issue is one of a series, bears a relationship to each other issue, is similar in subject matter to the other issues, and is similar in style and formats to other issues. Hence, the reports qualify as periodicals. Since these periodicals are distributed without charge, the sale by the printer to the customer is exempt from the tax.

(4) A prospectus and a brochure for the company’s mutual funds. A prospectus is a “printed sales message” since such materials are printed for the primary purpose of promoting the sale of goods or services. Hence, the sale is exempt from tax.

(5) A reply envelope and an account application form. Generally tax applies to sales of reply envelopes and order or application forms unless they are sold as a component or integral part of the printed sales message. Hence, in order for the sale of the reply envelope or application to be exempt from sales tax, they must be stapled, glued, or otherwise affixed to the printed sales message and sold together with the printed sales message. 5/17/96.

432.0064.875 **Neck Hangers.** Neck hangers are sold to purchasers who attach them to nonreturnable containers of property which is sold. They are, for example, placed on a champagne bottle describing the contents thereof or for other promotional purposes. The neck hangers in question fall into three categories:

(1) This neck hanger is a form which lists three charities, one of which a purchaser of a bottle of wine may choose. The winery will send a donation of two dollars to that charity.

(2) This is a neck hanger which is a pocket planner.

(3) This neck hanger consists of advertising printed matter.

These neck hangers do not describe the contents of the bottles nor do they instruct the application or use of the bottles’ contents. Rather, each is either a charity designation form, a pocket planner, or an advertisement. Therefore, these neck hangers do not qualify as labels.

The category 3 neck hangers are brochures whose principal purposes is advertising or promoting the sale of the bottles upon which they are placed. Thus, they are printed sales messages but they do not qualify for exemption because the

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neck hanger is delivered to the purchaser, (the winery) who places them on the bottles before they are sold and delivered to the grocery stores. (Regulation 1541.5(b)). 07/02/96.

432.0065 Newsletter as Printed Sales Message. A newsletter which promotes or advertises goods or services, may qualify as a printed sales message; however, if it contains news or information of general interest it may not be considered a printed sales message, but instead may be a periodical. 12/1/88.

432.0067 Owners of Printed Material. A retailer of posters hires and pays independent contractors for distribution. These posters are normally placed on buildings without obtaining permission from the owners of the buildings. Once the posters are in place, neither the retailer nor the contractors has any further interest in them. The posters remain in place until the property owner or someone else removes them. Under the above conditions, the property owners acquired “dominion and control” over the posters and thus became the “owners” of the posters for purposes under Regulation 1541.5 (b)(3).

Accordingly, a sale of posters printed to the special order of the customer and delivered by common carrier to the independent contractor for the purposes of placing the posters on the property of others is an exempt sale of printed sales messages. 2/23/93.

432.0068 Parking Lot Delivery. A seller delivers printed sales messages to the customer’s parking lot where distributors pick up and distribute the publications. The customer explained that the reason the printed sales messages are delivered to the parking lot is that they must be delivered to third parties the day they are delivered to the customer.

Regardless of the reason for having the publication delivered to the parking lot, since the seller delivers the publications to the customer instead of the third party donees who receive them at no cost, the sale to the customer does not qualify for the exemption for printed sales message. 4/15/92.

432.0069 Posters. Posters printed for distribution to video stores may qualify as printed sales messages when they consist of a single sheet of paper and are printed to the special order of the purchaser for the principal purpose of advertising or promoting video rentals. This type of poster would fall into the category of a “circular.” If such posters are delivered in accordance with the requirements in Regulation 1541.5(b)(2) and (3), the sale of the posters will not be taxable. 7/16/90.

432.0070 Preprinted Catalog Pages. A California computer products company purchases preprinted catalog pages from an out-of-state retailer who ships the pages directly to an in-state printer. The in-state printer incorporates the preprinted pages into catalogs that are printed for the computer products company. The final product is distributed to the company’s customers in accordance with Regulation 1541.5.

Since the out-of-state printer would only print the pages pursuant to a specific order from the customer, the pages are considered to be “printed to the special

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order” of the purchaser. Therefore, when the computer product company purchases the preprinted pages from the out-of-state printer and has them shipped to the in-state printer for incorporation into the catalog, the use of the preprinted pages by the purchaser is exempt from use tax. 5/6/92.

432.0071 **Price List.** A price list comprised only of a listing of items for sale and their prices serves only for informational purposes and is not promotional in nature. Therefore, it does not fall within the definition of a “printed sales message” under Regulation 1541.5. 5/22/89.

432.0071.400 **Principal Purpose—Contest.** A firm distributes a mailer which promotes/solicits a contest and contest prizes through the use of 900 telephone numbers. It also distributes discount coupons with the mailer. In order to determine whether the “principal purpose” of the mailer is for “advertising or promoting goods and services,” the entire scope of the program must be analyzed. It is conceded that the offer of a 900 telephone number is a “service.” The contest number is merely a gimmick to (1) sell its 900 number services and (2) distribute discount coupons so its client-retailer-marketer can promote its products and services. Thus, although the manner in which the 900 number is promoted is not immediately apparent, the mailer pushes the use of the 900 number as the preferred method of response. As such, its principal purpose is to advertise and promote services and the mailer thus qualifies as a printed sales message. 12/31/96.

432.0071.500 **Principal Purpose—Response Card.** A response card contains information on both sides. The response card is essentially a form which a prospective customer fills out to request further information. The printed sales message portion of the card comprises less than 50 percent of the card’s area. The principal purpose of the response card is for the prospective customer to complete and return information to the advertiser. Thus, it is in the nature of an order form and sales tax applies to the sale of the response card. 9/26/95.

432.0072 **Printed Sales Messages.** A brochure for an upcoming video release which summarizes the video’s contents, shows prices or price codes and has a “pop-up” cardboard insert of the video’s character(s), can qualify as a printed sales message, provided it meets all the other requirements in Regulation 1541.5. 3/29/90.

432.0072.001 **Printed Sales Messages.** Cards printed to the order of an insurance company advertising a special program for holders of a certain bank credit card are delivered to the bank’s card center to be included with the credit card statement. The cards are printed sales messages for specific services. The bank may be considered a mailing house acting as the agent of the purchaser (insurance company) if the contract between the purchaser and the bank is an arm’s length transaction where true compensation is provided to the bank. If these conditions exist, the sale of the cards to the insurance company would be exempt under Regulation 1541.5. 5/9/91.

432.0072.200 **Printed Sales Messages/Printing Aid.** A company contracts separately with an advertising agency to do the mechanical through the color

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separation process and a printer to do the printing, with each company billing separately. Provided the transaction meets all the other requirements of a sale of a "printed sales message," the sale by the advertising agency would not qualify as a sale of printed sales messages. Only the printer's sale of the printed matter could qualify an exempt sale.

An agency purchases for resale photography, art, and other products or services that become a component part of the finished product. It passes title to the company prior to any use by the agency. The agency partially develops the product in one geographical area, ships it to another geographical area, both in California, for completion by another contractor working for the agency. The contractor, in turn, ships the product to an out-of-state printer who prints the insert and ships it directly to a California newspaper for distribution. The customer is billed for the mechanical/color separation separately from the printing.

Under these facts, and assuming that the company is contracting only with the advertising agency for the purchase of printed matter, the application of tax to the advertising agency's charge for the photography, art, and other property it purchases for resale depends upon whether the advertising agency makes any use of the property in California prior to shipping it out of state. If the advertising agency produces, or has the subcontractor produce, a color separation in California, the photography and art do not become an ingredient or component part of the color separation. The image embodied in the photograph or art is only reproduced in the color separation and the photograph or art is used as an aid in producing the color separation. Since the advertising agency sells the photograph and art prior to such use, and the sale is in California, sales tax applies to the advertising agency's sale of the printing aids. This is true regardless that the sale of the color separation may be exempt from sales tax as a sale in interstate commerce or that the sale or use of the printed matter may qualify for exemption as a printed message or as a component part of a newspaper. 1/9/89.

432.0072.700 Professional Magazines. A taxpayer derives its revenues from sales of advertising space in various magazines which it publishes. These are professional magazines which cater to business students, engineering students, and practicing engineers. The magazines are distributed free of charge.

The magazines do not qualify as printed sales messages. The advertisements do not directly advertise or promote goods or services. These publications provide career information and allow the various advertisers (potential employers) to solicit applications from potential employees. The ads, without exception, do not identify goods or services, but only identify the company which placed the ad. 3/26/92.

432.0073 Promotional Material. An out-of-state printer/mailer asked for application of tax to the following transactions.

(1) Printer/mailer produces and mails in Pennsylvania direct mail promotional material for customer based on customer's mailing list at no cost to the recipients. Printer/mailer and customer both have nexus in California.

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Title passes at the time promotional material is desposited in the mail in Pennsylvania. Accordingly, use of the property by the customer occurs outside of California, and the use tax does not apply.

(2) Printer produces catalog insert pieces in Pennsylvania for customer and drop ships them via common carrier to a bindery/mailing house in California contracted for by customer. The printer has nexus in California. The printed pieces will be incorporated into a catalog by the bindery/mailing house and will be mailed based on customer's mailing list at no cost to the ultimate recipients. Some pieces will be mailed to recipients within California; others will be mailed to recipients outside of California.

Customer is considered to be making use of the catalog insert pieces in California by sending the printed material to recipients. Use tax applies to such use of the property including the material shipped to recipients outside of California. It is immaterial whether or not the customer is engaged in business in California. However, if the catalog qualifies as a printed sales message and meets the requirements of Sales and Use Tax Regulation 1541.5(b)(1)(2)(3), the transaction would be exempt from sales and use tax.

(3) Printer/mailer produces in Pennsylvania direct mail promotional material for customer and ships material via common carrier to a post office in California for mailing to recipients both within California and out of California. Printer/mailer has nexus in California and customer may or may not have nexus in California.

Answer is the same as response to transaction 2 above. 11/21/91.

432.0073.001 Promotional Material. Printed materials which are printed to the specifications of a car company, consist of letters, a brochure, and posters. Of the three letters enclosed, one was to the dealers introducing the company's new engine programs. One was a sample letter sent to the dealers which they can copy and send to their respective customers. This letter detailed the format of the new engine program by listing all the included components which comprise the replacement engines. The third letter introduces the car dealer parts manager to posters that can be displayed which advertise the company's automotive products. The brochure combines pictures and printed words announcing and detailing the company's new engine program. The posters consist of pictures of the company's automobile and accessories. One suggests the purchase of a car for Christmas while the other indicates that consumers can fulfill all their needs by shopping at the company's dealers. The printer also sells the car company envelopes and mailing tubes in which the letters, brochure, and posters are enclosed for mailing. The printer mails the envelopes and mailing tubes which enclose the letters, brochures, and posters to all the company's dealers.

The letters, brochures, and posters are printed sales messages. The principal purpose for each is to advertise or promote a good or service; they are mailed or delivered by the printer, the seller of the printed material; and they are received by persons at no cost. Additionally, the printer's sales of envelopes and mailing tubes are also exempt from tax since each are sold with the printed sales messages for shipment or delivery. 3/1/89.

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432.0074 **Promotional Prizes.** Window displays, sun visors, clocks, calendars, and other novelty items containing printed promotional messages for home videos which are provided to wholesalers for distribution to retailers as they see fit, are not “printed sales messages”. The exemption provided for in Section 6379.5 is limited to “. . . catalogs, letters, circulars, brochures and pamphlets . . .” 1/4/90.

432.0075 **Providing Flyers and Other Services.** A service organization plans to provide service to real estate agents. They requested information regarding the following services:

1. Initially “services” provided will be the creation and mailing of flyers. Other “services” such as rubber stamps, presentation folders, and copying are available.

The flyers, that were reviewed, are circulars which advertise services. The true object of the contract is the brochure which is created and distributed. The transactions are retail sales of tangible personal property. The flyers qualify as “printed sales messages” and the exemption from sales tax applies if the requirements of Regulation 1541.5(b) are met.

2. As the operations continue to grow, additional services will be provided such as: liaison between lender, escrow and agent; meeting with appraisers, termite inspectors and others; clerical support; and statistical studies.

Tax would not apply to the additional services provided that tangible personal property was not sold to the clients as part of these services (e.g. sale of standard statistical reports). 3/17/92.

432.0076 **Proxy Statements and Securities & Exchange Registration.** Proxy Statements and Securities and Exchange Statements will not qualify as printed sales messages, regardless of the manner in which they are mailed. Neither the proxy nor the registration statements are printed for the principal purpose of advertising or promoting goods or services. 7/27/88.

432.0076.800 **Publication Advertising Conventions and Seminars.** An association purchases from a printer brochures printed to the special order of the association. These brochures advertise or promote convention or seminars conducted by the association. The association never receives these brochures from the printer, but rather a mailing house distributes the brochures to persons who receive them free of charge and who become the owners thereof.

The sales of the brochures to the association are exempt as printed sales messages. The brochures are printed to the special order of the association for the principal purpose of advertising, they are distributed by a mailing house, and they are received at no cost by the person who becomes the owner of the brochures. 8/31/88.

432.0077 **Publication Advertising Properties for Sale.** A publication, which advertises properties for sale and is distributed to supermarkets and newsstands where it is free of charge to the general public, qualifies as a printed sales

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message. However, in order for the exemption to apply, the publication must be delivered in accordance with the requirements of Regulation 1541.5 (b)(1) to (b)(3). 11/27/89.

432.0078 Publications Shipped to Purchaser's Premises. Publications which qualify as "printed sales messages" are shipped to the parking lot of the purchaser. An independent contractor picks them up for delivery to other persons at no cost to that person.

Since the publications are sent to the premises of the purchasers, they are not sent directly to "any other person at no cost to that person who becomes the owner thereof". Tax applies to the sales of printed sales messages which are delivered to the purchaser. (Sales and Use Tax Section 6379.5). 11/21/91.

432.0079 Publication Is Not a Printed Sales Message. A publication containing advertising in addition to articles of general interest about types of industries, opportunities, and economic conditions in a targeted geographic area to lure economic development clients, new businesses, and executives to that area and is not a printed sales message. The publication is not advertising matter which is printed principally for the purpose of advertising particular goods or services. Retail sales of this publication are taxable. 4/27/90.

432.0080 Qualified Common Carrier. A person need not be a licensed common carrier in order to be a common carrier for purposes of Regulation 1541.5. A person must only be engaged in the business of transporting property for hire and offer his or her services indiscriminately to the public or to some portion of the public. 10/21/96.

432.0082 Radio Station Newsletter. A radio station newsletter promoting its events, disc jockeys, and prizes which includes a response mechanism for listeners to write back to the station, qualifies as a printed sales message. As such, the sale of the newsletter is exempt provided it meets the other requirements of Regulation 1541.5 (b)(1) through (b)(3). 5/31/91.

432.0085 Real Estate Flyers. Real estate flyers which contain articles concerning real estate are published monthly. The flyers are sold to customers in quantities of 500 to 10,000 per month, every month. The flyers are shipped by UPS directly to the customers.

Since the flyer does not contain printed sales messages promoting the sales of goods or services and is shipped directly to the customer, the sale is not exempt under Regulation 1541.5(b). 9/24/91.

432.0090 Reply Envelope/Order Form. A reply envelope/order form is a single sheet of paper. Approximately 2/3 of the sheet of paper is folded and glued to make a postage paid reply envelope. The remaining 1/3 is the order form. One side of the order form is fully devoted to a printed sales message. The reverse side of the order form contains spaces for affixing stickers to indicate acceptance of one free issue, and to start a subscription to a magazine. The reply envelope is provided for the primary purpose of promoting the sale of magazine subscriptions.

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Given that the reply envelope is for the purpose of securing an order, and that the reply envelope is affixed to the printed sales message, taken as a whole, the document is printed for the principal purpose of promoting the sale of the magazines and qualifies as a printed sales message. 5/7/92.

432.0096 Sales Subject to Use Tax. Catalogs and flyers are printed to the order of an out-of-state wholesaler of office supplies by an out-of-state printer. By previous agreement, the catalogs and flyers are sold by the wholesaler to its dealers, some of whom are in California. The materials are shipped by common carrier from the printer directly to the dealer or to the dealer's customers. No charge is made to the dealer's customers.

The catalogs and flyers do not qualify for exemption as "printed sales messages" because they were not printed to the special order of the purchasers, the dealers. Those items that were shipped from the out-of-state printer directly to the dealer's customers are not subject to either California sales or use tax. The sale occurred out of state, and the use consisted of passage of title by gift or donation to the addressee, which use occurred upon deposit of the property with the delivering carrier, which also occurred out of state.

The portion of the materials shipped directly to the dealers in California are subject to use tax, and the wholesaler is required to collect the tax and remit it to the state. 5/17/90.

432.0099 Schedule of Events. A publication contains a schedule of various performances and events. Two versions are published, one is for paid subscribers and the other is given away free at music stores. The purchaser was a ticket brokerage firm. The publication also includes advertisements. At issue here is whether or not the schedule of events in the publication constitutes advertising which will result in the advertising portion of the publication to exceed 90 percent of the total printed area.

In this case, the schedules are intended to induce recipients of the publication to purchase tickets from the ticket brokers. Accordingly, the scheduled information is regarded as advertising. The publication, therefore, does not qualify as an exempt periodical.

However, the printed matter in the publication is the type of printed sales messages specified in the statute, section 6379.5. Accordingly, those publications delivered to persons other than the buyer and at no cost to the recipients would qualify for the exemption provided for printed sales messages. 12/23/93.

432.0100 School Catalogs. School catalogs which are generally reference materials, i.e. comprehensive listings of class offerings, do not qualify as printed sales messages. For purposes of Section 6369.5, "printed sales messages" is limited to those messages which principally advertise or promote the goods or services to which the printed matter relates. Accordingly, those catalogs which generally advertise a school to solicit prospective applicants for a fee do qualify as printed sales messages. To qualify as tax exempt printed sales messages, the mailing requirement of Section 6379.5 must be satisfied. 4/21/87; 5/13/87.

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432.0120 School Catalog or Class Schedule Exemption Requirements. In considering whether a school catalog or class schedule falls within the purview of the printed sales message exemption the following guidelines are used.

(1) The course offerings must be sufficiently detailed, e.g. course name, description, name of instructor, time and place of classes, to be considered sales messages.

(2) The publication must be substantially comprised of these sales messages.

(3) An application for registration must be included with the class schedule.

(4) Fees for the majority of the courses offered must be specified in the schedule of classes. The fact that the fees can be computed from available information will not suffice.

(5) The mailing requirement of Section 6379.5 must be satisfied. 2/28/91.

432.0120.500 Seller also Common Carrier. The taxpayer manufactures and sells printed sales messages. The same taxpayer is licensed as a common carrier. As a common carrier, the taxpayer also contracts to deliver the messages it has sold to customers. The taxpayer separately contracts and invoices for the common carrier services. Title to the messages sold passes to the customer before the commencement of delivery to the recipients. Under section 6379.5, the common carrier must be an entity other than the seller or the purchaser. Thus, the sale of the messages does not comply with the provisions for the exemption when the seller and the common carrier are the same entity regardless of the passage of title to the printed sales messages. 6/14/96.

432.0121 Shopping Guides. Shopping guides published periodically, which do not qualify as newspapers or periodicals, are distributed free of charge by the publisher who obtains revenue from the sale of advertising space in the shopping guide. Although these shopping guides are used principally to advertise goods and services, they do not meet the test of “printed sales messages” provided in Regulation 1541.5 (a)(2), because they are not “printed to the special order” of the purchaser. Under these circumstances, the publisher is the consumer of these shopping guides and owes tax with respect to the paper and ink used to produce them. 7/28/89.

432.0121.001 Shopping Guides. A publisher/printer produces printed material which qualifies as a printed sales message in that it is printed for the principal purpose of promoting the sale of goods or services. However, in order to qualify for the exemption, the printed matter must be printed to the special order of the purchaser and mailed or delivered by the seller (i.e., the printer) to someone other than the purchaser as specified in section 6379.5. If the publisher of a shopping guide is merely selling advertising space to advertising customers, the transaction does not involve the sale of printed material to the special order of the purchaser since at no time does the publisher transfer title of the shopping guide to the customer/advertiser. As such, the publisher is the consumer of the shopping guide. Therefore, tax applies to the sale of the materials to the publisher/printer. 4/2/96.

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432.0130 **Standeeds.** Freestanding cardboard printed matter (commonly known as “standees”) and hanging mobile cardboard printed matter commonly placed in businesses and printed for the principal purpose of advertising or promoting goods or services qualify as “printed sales messages.” 6/26/96.

432.0140 **Taxpayer as Consignee.** Directories, which qualify as printed sales messages, are printed to the special order of the taxpayer. The sellers ship the directories by common carrier to an address specified by taxpayer. The carrier is an independent contractor. The address specified by taxpayer is usually a parking lot centrally located within the area or neighborhood in which the directories are to be delivered. The bills of lading all show taxpayer as the consignee. Taxpayer hires individuals to deliver the directories to homes and businesses. Taxpayer believes that the individuals deliver the directories as independent contractors and not as his/her employees.

Under the facts described above, the sales of directories do not qualify for exemption. Since the bills of lading show the taxpayer as consignee, the directories are sent to the taxpayer, rather than to “any other person at no cost to that person who becomes the owner thereof”. In accordance with Sales and Use Tax Regulation 1541.5(d)(6), tax applies to sales of printed sales messages which are delivered to the purchaser. The taxpayer’s action of immediately turning the directories over to independent contractors to then deliver to donees does not provide a basis for exemption. 9/19/90.

432.0160 **Telephone Directories.** Telephone directories which consist entirely of yellow pages (classified and display advertising) qualify as “printed sales messages.” Telephone directories that consist entirely of telephone numbers in alphabetical order, or in order by street address, do not qualify as “printed sales messages.” Telephone directories which include a white pages section (alphabetical or street address listing) and a yellow pages section (advertising by goods or services) qualify as “printed sales messages” if more than one-half of the telephone directory consists of yellow pages advertising. 10/27/87.

432.0161 **Telephone Directories.** In a combined telephone directory, consisting of both yellow pages and white pages, a listing printed in bold style type in the white pages does not qualify as advertising. Yellow page listings constitute advertising and white page listings constitute nonadvertising. 5/24/88.

432.0162 **Telephone Directories.** The Fremont and Milpitas, Newark and Berryessa Telephone Directory has both “white” and “yellow” pages bound in the same volume. White pages mean and include those pages which alphabetically list names, addresses and phone numbers in a single line. Yellow pages generally mean those pages which contain blocks of advertising. White pages are not printed sales messages while the yellow pages are printed sales messages. In addition, the directory also features center color ad pages and coupon pages, which are also considered to be printed sales messages.

The principal purpose of the directories is to advertise or promote goods or services. This conclusion is based on the substantial quantity of yellow pages, center color ad pages, and coupon pages which outnumber the white pages. In

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addition, the recipient of the directory receives it at no charge and becomes the owner thereof. To qualify as tax exempt printed sales messages, the mailing requirement of section 6379.5 must be satisfied. 6/13/88.

432.0200 **The Salt Shaker.** The Salt Shaker is a publication in the form of a newsletter which contains informative articles on state and local tax issues. As this publication does not generally advertise or promote the sale of goods or services, the publication does not qualify as a "printed sales message". 5/6/93.

432.0201 **Information Flyer.** A flyer providing information on a five-day seminar which is free to selected participants, except for travel to and from the institute, is not a printed sales message since it does not promote goods or services for sale. 4/11/97.

432.0300 **Unmailed Printed Sales Messages.** The taxpayer, a print broker, contracts with a printer for printing material that qualifies as "printed sales messages" and sells that printed material to its client. The printed sales messages are delivered by the printer to a mailing house. The mail house merges the printed sales messages and the client's company's billing into an envelope and delivers them to the U.S. Post Office for mailing. Since the exact number of billing statements to be mailed are not known when the printing order is placed, the taxpayer orders an extra number of printed sales messages to be certain that a sufficient number are available. For example, 165,000 are ordered and 160,000 are mailed leaving 5,000 left over. The 5,000 are destroyed since they are date sensitive and not to be used again.

In this situation, the taxpayer, a print broker, contracts with a printer for the printed material and then sells that printed material to its customer. The taxpayer purchases the printed material for resale. In which case, sales tax will not apply to the sale of the printed material to the taxpayer. The taxpayer's sale of the printed material to its customer is a retail sale subject to sales tax unless the sale is exempt. Since the printed matter is a printed sales message, the exemption for the sale of printed sales messages applies.

In addition, the taxpayer would not incur tax liability for material which was purchased for resale but has become unsalable and is discarded. (Annotation 280.0660, 11/28/66.)

Accordingly, under these specific facts, the sale of the printed materials is exempt from tax including that printed material which was not used (destroyed). 3/8/96.

432.0500 **You Can Win \$5,000.00 For Your School!** The publication "You Can Win \$5,000.00 For Your School" does not contain a printed sales message promoting the sale of goods or services. Accordingly, this publication does not qualify as a "printed sales message." 6/11/93.

432.0600 **"Physician's Handbook."** This handbook advertises services to community physicians for the purpose of attracting patient referrals. The table of contents of the handbook lists the university's various departments. The sections of the handbook describe the departments and list physicians and telephone

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numbers. There is also an alphabetical index of physicians. This handbook appears to be a directory that is a reference guide of the services and physicians and is not a printed sales message within the meaning of Regulation 1541.5. 11/19/92.

432.0607 Posters Placed on Walls. A taxpayer prints sales messages in the form of posters for its customers. The taxpayer sends the posters by common carrier or U.S. mail to independent contractors for distribution. The independent contractors are hired by the taxpayer. The contractors place the posters on the walls of boarded-up buildings or temporary walls surrounding construction sites. Neither the taxpayer nor the contractors request permission from the owners of the walls to place the posters. The posters remain in place until the property owner or someone else removes them.

The property owners acquire dominion and control over the posters and thus become owners of the posters. The sale of the posters is therefore exempt. 11/15/93.

432.0610 Prospectuses. Prospectuses are printed sales messages as defined under Regulation 1541.5(a)(1). 7/27/88.

432.0750 Soliciting Donations. Circulars soliciting donations for a charitable organization are not printed sales messages even though the donations will be used by the organization to purchase goods and services that will be provided to those in need.

Solicitations can only be construed as a "printed sales message" if they meet the principal purpose of advertising or promoting goods or services. Solicitations requesting donations do not meet this criteria. Therefore, the circulars are subject to the tax. 4/15/94.

432.0760 Special Order of the Purchaser. An out-of-state wholesaler contracts with out-of-state printers for catalogs and fliers advertising its products. These advertising materials are imprinted with dealers' names. Dealers are not agents of the wholesaler, but are independent retailers. The catalogs and fliers are shipped by the printer to California dealers and to the dealers' customers. The wholesaler charges the dealers for the advertising materials. The dealers make no charge to their customers for the materials.

The regulation on printed sales messages requires that advertising materials be "printed to the special order of the purchaser." The advertising materials described here are designed and printed to the request of the wholesaler. Accordingly, the sales to the dealers do not meet the requirements for exemption under the regulation. However, on shipments direct to the customer, the use takes place out of state when the printed matter is deposited in the mail. In these instances use tax does not apply. 5/17/90.

432.1100 Use of Mailing House. Pursuant to Revenue and Taxation code section 6379.5 and Regulation 1541.5, there is no restriction requiring the parties to use a mailing house that acts solely as the purchaser's agent and not one that acts as the seller's agent.

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If the mailing house acts as an agent of the seller, the printed sales messages would be “mailed or delivered by the seller” and, thus, meet the delivery requirement of the statute. It is believed that the language was added to allow the seller to deliver the printed sales messages to a mailing house hired by the purchaser without losing the exemption. 12/16/91.

- 432.1700 **Telephone Directory Bold Listings.** Bold listings and other business listings in the white pages of a telephone directory are not regarded as advertisements. Coupon sections do qualify as advertising. In calculating whether a directory contains more than 50 percent advertising, only the yellow pages and coupon sections are considered as advertising. 11/5/93.

PRIZES

See Gifts, Marketing Aids, Premiums and Prizes.

PROCESS, SERVICE OF

See Collection of Tax by Board.

PROCESSING

See Producing, Fabricating and Processing Property Furnished by Consumers—General Rules.

435.0000 PRODUCING, FABRICATING AND PROCESSING PROPERTY FURNISHED BY CONSUMERS—GENERAL RULES—Regulation 1526

See also Automatic Data Processing Services and Equipment; Construction Contractors; Gross Receipts; Manufacturers of Personal Property; Motion Pictures; Photographers, Photostat Producers, Photo Finishers and X-ray Laboratories; Printing and Related Arts; Repainting and Refinishing.

(a) ASSEMBLY, DISASSEMBLY AND REASSEMBLY

- 435.0020 **Assembling** steel lockers and shelving is not regarded as installation labor. Accordingly, tax applies to charges for assembling lockers and shelving sold by the retailer as well as to charges for assembling parts furnished by a consumer. 7/19/50.

- 435.0038 **Assembly of Electronic Kits and Repair of Electronic Equipment.** The assembly of an electronic kit for a consumer who furnishes the kit constitutes the completion of the manufacture of the electronic item. Charges for this assembly labor are taxable.

The providing of labor on previously assembled and already used electronic items which restores the item to its original condition for its original use is not taxable. 12/7/93.

- 435.0040 **Assembly of Furniture—Fabrication, etc.** A bank (consumer) ordered furniture from a California retailer who ordered the furniture from an out-of-state supplier for direct shipment to the bank, with title to pass out-of-state. The retailer assembled the furniture on the bank's premise. The purchase price of the knocked-down furniture was subject to use tax, and the assembly of the parts was step in a series of operations resulting in the production

PRODUCING, ETC. (Contd.)

of tangible personal property. Accordingly, such an assembly constituted fabrication labor subject to sales tax. 7/25/67.

435.0060 Bolting and Assembly Shelving. A consumer ordered shelving from a retailer; the retailer ordered the shelving from the factory for direct shipment to the consumer; when the shelving arrived, the retailer assembled it on the consumer's premises for a separately stated charge. The charges for bolting and assembling the shelving are subject to the sales tax, since such assemblage constitutes a step in a series of operations resulting in the production of tangible personal property. 3/15/66.

435.0080 Charges for Delivery, Assembly, and Reconfiguration. Charges for the assembly of office furniture, lockers, shelving, bookcases, inter-connecting partitions, etc., received knocked-down and/or in cartons are taxable whether the assembly is done at the retailer's premises, or at the customer's premises, and regardless of whether the work is done by the retailer's employees or a sub-contractor's. If the assembled units are to be attached to the customer's floor or walls, charges for such installation are not taxable. Similarly, tax does not apply to additional charges for re-configuring units which have already been assembled, such as desks in which drawers are to be moved from right side to left side, etc.

Charges for shipment to a subcontractor's warehouse for later delivery are not excludable from the measure of sales or use tax because the charge is not for transportation "directly to the purchaser." 2/27/91.

435.0100 Dismantling. The seller of surplus houses who also dismantles them at request of buyer and makes an additional charge for such dismantling, must include such charge in his taxable gross receipts. 9/2/54.

435.0120 Engineering Services. Charges for engineering services at the site of installation of equipment necessitated by the bolting of sections of the equipment together prior to its being affixed to the floor, constitutes assembly or fabrication rather than installation, and should be included in the measure of the tax. 8/31/53.

435.0122 Fabrication. A taxpayer manufactures steel stampings which are manufacturing aids used in the construction of hollow concrete floors. Customers sometimes request that the stampings be preassembled into eight foot squares. The labor charge for this service is in addition to the usual selling price of the stampings.

When the properties being sold are assembled eight-foot sections of steel stampings, the fee for the assembly is taxable, whether or not separately stated. Completing the production of a finished article for a consumer by affixing one piece of tangible personal property to another such piece is taxable fabrication pursuant to section 6006(b) or (f) of the Sales and Use Tax Law. 10/30/91.

435.0123 Fabrication Labor. Under section 6006(b), the term "sale" is defined to include the producing, fabricating, or processing of tangible personal property furnished by a consumer.

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Where fabrication labor is performed within California and outside, with delivery to the purchaser taking place inside California and outside California, respectively, California sales tax applies to the California charges, but not to the out-of-state charges, without regard to where payment is tendered. 12/18/95.

- 435.0130 **Iridium.** The iridium metal is purchased from and fabricated into crucibles by an out-of-state company and is then shipped to another company's California plant where the crucibles are used as containers for molten sapphire in the plant's growth operation. Although not meant to become incorporated into the grown sapphire crystal, a minute portion, less than $\frac{1}{2}$ of 1%, becomes incorporated into the grown sapphire crystal. Approximately 90% of the iridium metal is normally recovered and returned to the company's pool account with the out-of-state supplier.

This transaction may be handled on a "net exchange" basis. Tax is properly due on the charge made to the instate company for reclaiming iridium from crucibles returned to the out-of-state company. 10/20/70.

(See also annotation 330.2627.)

- 435.0138 **Platinum.** Platinum is purchased and fabricated into a liner by an out-of-state company and shipped to another company's California plant. The liner is used in the emerald growth reactors but does not become a part of the end product. The instate company maintains a platinum pool account with the out-of-state company and California tax is paid on purchases of platinum and also on the fabrication charges but not on the "reclaiming charge" made by the out-of-state company.

The "net exchange" principle is applicable to the platinum. That is, tax is due on the fabrication charge and not on the value of the returned platinum. However, tax is also properly applicable to the "reclaiming charge." 10/20/70.

(See also annotation 330.2627.)

- 435.0140 **Reassembling Tangible Personal Property That Has Been Previously Assembled.** When tangible personal property is manufactured and completely assembled at the retailer's plant, then disassembled for shipment and reassembled at the buyer's place of business, the reassembling constitutes a reconditioning of the property rather than fabrication. Accordingly, separately stated charges for such reassembly are not subject to tax if title to the tangible property passed to the buyer prior to its reassembly and if the buyer was not required to hire the seller to do the reassembly. 11/14/67.

- 435.0143 **Reassembly.** If property had been fully assembled prior to its disassembly and is not substantially different in its reassembled form from its original form, the labor to reassemble the property is a nontaxable service if: (1) The charges for reassembly are separately stated, (2) title to the property passed to buyer prior to the reassembly, and (3) the buyer was not required to hire the seller to do the reassembly. 12/29/86.

- 435.0144 **Repair vs. Fabrication.** A manufacturer of integrated circuits purchases silicon wafers which are etched with micro-circuitry to produce

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integrated circuits for sale. Each batch of wafers is tested to assure proper manufacturing by withdrawing a sample wafer and testing it. Some percentage of wafers fail to meet quality control standards and are rejected. Most rejected wafers are scrapped. Some are shipped to vendors who back-lap them. Back-lapping consists of cleaning and coating. Back-lapped wafers do not meet the manufacturer's quality standards for manufacturing integrated circuits for resale and are used to test various manufacturing processes. These test wafers are processed through the individual manufacturing processes separately from production wafers as a verification that the process is operating properly. If the process is operating properly, new production wafers are fed through the process as part of the normal manufacturing operation.

In order for an activity to be regarded as the performance of repairs, the product must be returned to its original condition or function. If a transaction consists solely of furnishing repair labor, it is regarded as a service activity which is not subject to tax. In the above situation, the back-lapped wafers are not regarded by the manufacturer as acceptable for use in its manufactured product and the back-lapped wafers are not being repaired. The manufacturer's vendors are producing a product which the manufacturer uses to test its manufacturing process. Section 6006(b) define sales to include processing of property furnished by another for a consideration. That is what occurs in this situation. Accordingly, tax applies to the amount charged to the manufacturer by back-lap vendors. 10/20/88. (Am. 2000-1).

435.0144.750 Salvaging of Raw Materials. The process of melting down wire furnished by a customer and the drawing of new wire from copper castings is a fabrication process. This is the salvaging of raw material and the manufacture of a new product. If the process involves only the heating of the wire furnished by the customer to drive off impurities and to recondition the wire, this operation is a repair transaction. 10/28/91.

435.0145 Shelving. A corporation is engaged in the furnishing and installation of market equipment, including meat monorail systems, adjustable shelving, and overhead conveying systems. The item in question involves labor charges in connection with shelving delivered to the buyer in a knocked-down condition (steel pipe uprights, brackets, shelf frames, and steel wire trays). The questioned shelving generally is furnished in conjunction with the sales and installations of other food handling equipment under a single order. The corporation states that, because the individual components of the shelving are treated with a hot galvanized dip, factory assembly is necessary to make sure the components fit, since galvanizing sometimes causes warping of the frames or other undesirable effects. The shelving is then disassembled and shipped to the jobsite and reassembled. After delivery to the customer's place of business, the shelving is assembled prior to its being placed in its final location. The shelving generally is free standing.

In this case, the shelving was reassembled at the jobsite prior to being placed in its final location as a free standing unit (without attachment to the realty). Under such circumstances, the assembly labor does not qualify as nontaxable

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installation labor. The corporation cited Annotation 435.0140 as support for its belief that this labor is not taxable. The corporation's method of operation is not in conformance with the requirements for nontaxable as set out in that annotation. The charges for labor are not separately stated, there is no showing that title to the property passes to the buyer prior to the assembly, and reassembly is a contractual obligation of the seller under the agreement to furnish and install. 4/28/76.

435.0150 Tapes and Reels. A taxpayer provides processing services and specializes in surface mount device tape and reeling. Surface mount device tape and reel service involves placing customer provided semiconductor chips onto a special carrier tape. The tapes contain recesses where the chips are placed. A clear film is then placed over the carrier tape to prevent the chips from falling out. The filled tape is then rolled up on a reel. The reel containing the filled carrier tape is then packaged and shipped to the customer.

The customer loads the reel onto an assembly machine. The carrier tape from the reel is fed into the assembly machine similar to a machine gun belt. The assembly machine removes the chips from the tape and stamps the chips onto circuit boards. The carrier tape is emptied and discarded by the customer. The reel is also discarded when it becomes empty. The chips are expensive sensitive devices. They cannot be loaded onto a machine by simply dumping the chips into a hopper. The assembly machines are designed to accept these semiconductor chips via the tape and reel system. Without the tape and reel system, the semiconductor chips cannot be loaded into the assembly machine.

With the taping service, the taxpayer includes various levels of inspection of the semiconductor chips. The fee for the tape and reel service varies with the level of the inspection service chosen by the customer.

The customer/manufacturer is purchasing the tapes and reels which are used in the manufacturing process to keep the chips from being damaged. Thus, the taxpayer is selling tangible personal property (the reels and tapes) to be used as manufacturing aids and any service provided, such as chip placements and inspection, are incidental to that sale. Therefore, the total gross receipts from the sale of the reels and tapes are taxable. 1/21/94.

435.0152 Television Filming Sets. A taxpayer is engaged in designing, constructing and selling or renting scenery used in filming television commercials. The taxpayer assembles the sets at its own facilities so that approval can be obtained from its customers prior to filming. After approval, the set is disassembled, transported to the studio and reassembled. Separate charges are made for setup, stand by during filming, disassembly, transportation, and art direction.

If the standby and disassembly are optional, the charges are not subject to tax. If the reassembly is optional, and title or possession are passed to the customer prior to reassembly, tax does not apply to the charges.

Art direction involves a person who ensures the set looks good on film and decides what props are needed. This person also is responsible for watching the monitor during filming and making changes that may be needed. The portion of

PRODUCING, ETC. (Contd.)

the charge that relates to the designing and construction of the sets is a service that is part of the sale and subject to tax. The portion related to work done during the filming is a service related to the filming and is nontaxable, if such charges are optional. 10/7/94.

(b) REPAIRING, RECONDITIONING AND INSTALLATION DISTINGUISHED
See also Installing, Repairing, Reconditioning in General. Bookbinding, see also Miscellaneous Repair Operations.

435.0160 Aircraft—Conversion Work. The conversion of a piston-type aircraft to a jet aircraft is not extensive change which would be considered as manufacture or fabrication of a new aircraft. It is a repair, reconditioning or modification of an existing aircraft and tax applies to the sale price of parts and materials used in the conversion. 9/21/65.

435.0180 Altering and Repairing Rugs. Merely reducing the size of a rug is not a taxable fabrication. But making two rugs out of one or one rug out of two is a taxable fabrication.

When charges for fabrication are taxable, charges for cleaning, finishing edges, and removing or adding fringe are also taxable.

When the work is merely the repair or reconditioning of a rug, none of such charges is taxable. 6/2/53.

435.0220 Binding, Serging and Sewing of Carpeting. When carpeting is sold, other than a contract to furnish and install wall-to-wall carpet, the tax applies to all charges except for actual installation charges. Thus charges for binding, serging, or sewing of carpeting for the purpose of fabricating a rug of a prescribed size or shape are subject to the tax, whether performed before or after title passes. On the other hand, sewing, serging and binding which is incidental to and performed in connection with a contract to furnish and install carpeting, are regarded as part of the labor of installation and the tax will not apply with respect to such charges. The contractor installing the carpet is the consumer of all materials used in contracts to install wall-to-wall carpet. 7/5/51.

435.0240 Bodies and Chassis. Sales tax applies to charges for installing bodies, new or used, on new chassis. Even if the chassis is furnished by the customers, the operation is a "sale" as defined by Revenue and Taxation Code section 6006(b), and the charge for the operation is subject to tax.

However, changing an old body from one old chassis to another old chassis is a repair operation and tax applies as provided in Regulation 1546.

Tax applies to the entire charge for placing a body on a new chassis including the cost of straightening dents, painting, etc. These are a part of the processing operation and are taxable according to the provisions of section 6006(b). For the same reason, tax applies to charges for painting the cab of a new chassis. However, tax does not apply to the single or lump-sum charge for painting an old or used body and chassis. If the painter furnishes the paint, tax applies to the cost of the paint to him.

PRODUCING, ETC. (Contd.)

Tax does not apply to charges for the labor of narrowing a used cab provided the operation is merely an alteration of the shape of the cab and does not result in a substantial change in form and kind. 8/15/51; 10/2/85; 6/10/75; 4/17/86.

435.0250 **Diamond Cutting.** The recutting of a customer's diamond to eliminate a chip or break constitutes nontaxable refurbishing labor. While tax applies to the charge made for the initial cutting of a diamond, whether the diamond is furnished by the retailer or is furnished by the customer, tax does not apply to labor performed in refurbishing a diamond, when the refurbishing is made necessary by damage to the original cutting. 7/16/91.

435.0260 **Heat Treatment of Customer's Material.** Charges for heat treating of customer furnished dies which involves merely repair and maintenance are not subject to tax. However, if there is a substantial change in the pattern cut by the altered die, so that it is fitted for a new and different use, the charge is taxable as a fabrication or processing. 4/9/57.

435.0280 **Hemstitching and Buttonholing.** Charges for hemstitching or buttonholing new garments are taxable as a step in the fabrication process. However, if these operations are performed in connection with repairing or reconditioning garments, the charges are not subject to tax. 11/1/51.

435.0300 **Microfilm.** Charges for placing exposed, developed microfilm on keypunched, aperture IBM cards, both the film and the cards having been supplied by the consumer, are taxable receipts from sales. The labor involves the creation for the first time of the desired article, i.e., the card with the film mounted thereon, and is not repair or reconditioning labor. 10/9/62.

435.0320 **Neon Signs.** If repair of a neon sign involves merely replacing an electrode in the tube and repumping the tube with gas, the labor charges would not be subject to tax. However, if it was necessary to replace a complete tube involving cutting tube to length, bending, placing electrodes, pumping with gas, and sealing the new tube, would constitute the sale of a completed tube. The labor charges in connection therewith would be taxable fabrication labor rather than exempt repair labor. 11/17/54.

435.0340 **Neon Signs.** Labor of bending glass tubing, exhausting the air, and filling with gas is fabrication labor, rather than repair labor. Attaching electrical contacts is also fabrication labor if it is part of fabricating repair parts such as tubing. On the other hand, merely attaching the tubing to the sign is repair labor. 7/22/52.

435.0360 **Perforated Liners of Oil Wells.** Sales tax was correctly imposed on charges for converting pipes into perforated liners for use in oil wells because the perforating of the pipe resulted into a production of a new product. However, the reslotting of used perforated liners so that the liners could be used again was not taxable because the reslotting was only a repair of the perforated liners and there was no change in the liners. 5/21/70.

PRODUCING, ETC. (Contd.)

435.0380 **Pipe.** Burning, sandblasting, straightening, cutting, welding and wrapping of old pipe is done to restore the pipe to its previous condition. Tax applies to the sales price of the materials used. The labor expended is nontaxable repair labor. However, welding pipe to make its length greater than it was goes beyond restoration and constitutes taxable fabrication. 11/5/64.

435.0400 **Pipe.** Application of somastic coating makes such a change in the characteristics of pipe that even its application to used pipe would result in a product quite different from new pipe. In other words, it would add valuable qualities not present in new pipe, and thus results in more than mere repair or reconditioning. If other types of coating have the same result, the application of the tax should be the same. 10/2/53.

435.0418 **Sale and Conversion of Used/New Bus to Motorhome.** Where the taxpayer contracts to sell a used bus to a customer, then subsequently contracts with the customer to convert the bus into a motorhome, such contracts constitute a single integrated transaction for the sale of the converted used bus, the gross receipts from which are subject to tax. That is, tax applies to the charge made for the bus as well as to any separately-stated charges related to conversion work performed by the taxpayer. A delay in executing the contract to convert the bus into a motorhome is immaterial for sales and use tax purposes. This applies whether the taxpayer performs full conversion, partial conversion or preconversion work.

Where a customer provides the taxpayer with a new bus for conversion into a motorhome, tax applies to the entire charge made by the taxpayer for the full conversion, partial conversion, or preconversion work if the bus was purchased for the purpose of converting it into a motorhome. A new bus will be considered to have been purchased for this purpose if the contract for the conversion work is entered into within 60 days of the date the bus was first registered with the Department of Motor Vehicles. (See Annotation 435.0470.)

Where a customer provides the taxpayer with a used bus for conversion, tax applies to charges for the sale of new parts and equipment whether the parts and equipment are withdrawn from inventory or fabricated by the taxpayer. However, tax does not apply to the charges for installing the property sold. 12/13/96.

435.0420 **Shoes.** If an additional charge is made for altering men's new shoes by addition of heel inserts, replacing of rubber heels for leather heels or stretching of the shoes, such additional charge would be subject to sales tax. If the shoes are not new, the replacement of worn heels, etc., would be a repair operation. 8/25/66.

435.0440 **Tank Truck, Creation of, as Fabrication or Repair.** A shop not only installs a propane tank on a chassis, but also makes and installs the fenders, skirts, tool box, brackets and other parts required to convert the chassis into a complete tank truck.

Assuming that the chassis is new, the entire operation constitutes a step in the fabrication of a complete tank truck and that the full charge is subject to the tax.

PRODUCING, ETC. (Contd.)

If the truck chassis is not new and the operation consists of rebuilding or converting used equipment owned by the petroleum distributor, the operation is not the fabrication of a truck. In this event, the tax will apply to the retail sales price of the fabricated articles and parts, such as tool boxes and fenders, etc., and other materials furnished, but not to installation charges. 1/24/51.

435.0460 Trailer Hitches. If a hitch is built on a new car, it is a completion of manufacture and charges for labor would be taxable as fabrication. Where the hitch is built into a used vehicle it is a sale of the individual pieces and the labor of attaching them would be exempt installation. If the hitch were preassembled, the only exempt labor would be that of attaching the hitch to the car. 5/21/54.

435.0464 Truck Converted to House Car. When the work is of such magnitude, the DMV classification changes from that of a truck and commercial vehicle (Motor Vehicles Code sections 410 and 260, respectively) to a house car (Motor Vehicle Code section 362). The sale results in a "modification" of the customer's vehicle and the taxpayer's total charge attributable to such modifications is subject to tax, with no deduction allowable for "installation labor." 4/21/76.

435.0470 Van Conversions. The following guidelines should be utilized for determining the measure of tax for van conversion work.

(1) Where a van dealer contracts with the conversion company to transform a new motor van into a house car at the request of the customer, the entire operation is a step or process in fabricating or producing tangible personal property. The dealer's charge to the customer for the conversion work constitutes gross receipts from a sale of tangible personal property.

(2) Where the customer provides the van conversion company with a new stock van for conversion into a house car the operation is also a step or series of operations resulting in the production of an end item of property desired by the customer and the entire charge made by the van conversion company is includible in gross receipts. A van will be considered to have been purchased for this purpose if the contract for the conversion work is entered into within 60 days of the date the vehicle was first registered with the Department of Motor Vehicles.

(3) Where the customer provides the van conversion company with a used motor van for conversion the operation constitutes a modification of the existing property. The tax is applicable to the fabrication or production of new parts and equipment or any new parts or equipment sold from inventory but is not applicable to the charge of installing the property sold. For example, the entire charge for constructing a bubble top for the used van would be subject to the tax. However, the charge for installing the new top or any item withdrawn from inventory would not be taxable.

A charge for the services of rearranging items that were part of the original equipment of the used van, amounts to refitting and would be exempt from the tax. 9/8/77.

PRODUCING, ETC. (Contd.)**(c) MISCELLANEOUS OPERATIONS**

435.0478 Adaption of Stock Cars to Racing Cars. A taxpayer contracts with an automobile manufacturer for the purpose of adapting the manufacturer's stock cars for racing and entering the cars in performance events. Under the terms of the contract, the taxpayer received possession and purportedly received title to the cars and related components supplied by the manufacturer. However, there were no formal documents of title executed. Also, pursuant to the terms and provisions of the agreement, the manufacturer retained complete control over the vehicles with respect to the performance events and all cars withdrawn from racing reverted back to the manufacturer.

Under these facts, a title clause standing alone is not conclusive of ownership for tax purposes when it appears that the manufacturer retains the essential indicia of ownership. Thus, ownership of the vehicles upon which taxpayer performed the modifications rested in the manufacturer and not the taxpayer.

Therefore, the modification and adaption of the cars consisting of (1) blueprinting the engine, disassembly and magnafluxing or zyglolding all parts, changing parts and reassembly, and (2) reducing weight of production cars, removing flammable materials, modifying hood, wheel width, etc., changing transmission, tires, wheels, etc., constitute a step or series of steps in the production of a racing model and are regarded as fabrication labor, the charges for which are subject to the tax. 12/11/73. (Am. 2000-1).

435.0479 Alteration of a New Product. Alteration of a new product to meet its final performance specification is fabrication and the charge for such fabrication is subject to tax under Regulation 1526. 1/26/90.

435.0479.125 Alteration and Repair of Dies. Changes to a die used to produce cardboard boxes, such as the removal or addition of locking tabs, are taxable fabrication labor because the boxes produced from the altered die will differ from the boxes produced by the die prior to alteration. Similarly, changes to a die from round cornered tabs to square-cornered tabs or vice-versa constitute taxable fabrication labor. A replacement of a 3/4-inch steel rules with a 1/2-inch steel rules "in order to make the die work better" is nontaxable repair labor if the boxes produced by the changed die are identical to the boxes produced before the change was made.

Where a company attributes five hours to refurbishing a die (replacement of worn out parts) and three hours to modifying the die (removal of two locking tabs and the addition of two scores) and the company does not itemize the two labor charges on the invoice, tax does not apply to the five hours of repair labor provided the company provides documentation sufficient to show that the proration is reasonable and reflects the work actually done. If the company cannot document its claim that part of the charges are nontaxable repair labor, then the entire charge is subject to sales tax.

Where the company refurbishes all of the dies for a major customer and alters (new vents added) 33 of the dies, no tax is owing for the dies that were only refurbished. As to the dies which were both refurbished and altered, no tax is

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owing for that portion of the labor attributed to the refurbishment provided adequate documentation is provided to support the claim. If the documentation is inadequate to support this claim, the entire charge for the changes to the 33 dies is subject to tax. 10/10/89.

435.0480 **Alterations.** Dies used by a supplier of automobile seat springs to an automobile manufacturer are owned by the latter. Alterations in the dies by the supplier necessitated by the yearly change in automobile models constitutes taxable fabrication labor by the supplier. A design change results in a new product being produced and the alterations go beyond the limits of reconditioning and repair. 9/22/65.

435.0500 **Batching.** Batching concrete aggregate into ready-mix truck and mixing the aggregate in the truck on the way to the jobsite, each constitutes taxable fabrication of the resultant wet concrete. 3/25/66.

435.0505 **Blending.** Blending petroleum products is an operation which results in the production or creation of tangible personal property pursuant to Regulation 1526. Such charges are includable in the measure of tax even if the blending occurred after the sale of the constituent product parts. 3/15/91.

435.0509 **Blocking Sweater Parts.** Charges for blocking sweater parts are taxable whether the blocking is done on parts woven from yarn purchased from the person who blocks the parts, or from others. The tax applies because the work performed is a step in a process resulting in the creation or production of tangible personal property. 6/20/91.

435.0520 **Calibrating and Sealing Trailer** constitutes a taxable processing. 3/19/52.

435.0527 **Calligraphy.** Calligraphy is regarded as artwork. Tax applies to calligraphy charges, even in circumstances where calligraphy is done on paper or to other products supplied by the customer. However, tax does not apply when calligraphy is done as addressing for the purpose of mailing. (Regulation 1541(c).) 12/9/93.

435.0540 **Canning Service.** The customer places fruit or other commodity in a can which then goes through a processing line and through a sealing machine. The customer pays a charge for the can and the canning operation. The operation constitutes a "processing" under Section 6006(c), and thus is a "sale," and the cans containing the customer's commodity are regarded as being sold with the contents, exempt under Section 6364(b). 6/12/57.

435.0560 **Canvas Gang Plank Curtains.** A charge for painting canvas gang plank curtains for steamship lines is taxable unless it is to restore or recondition the curtains. A charge for lettering on the curtains is not taxable. 2/14/50.

435.0580 **Change in Copy.** A charge for repainting removable sign to change the copy thereon constitutes taxable processing since the sign becomes essentially new. 8/29/51.

PRODUCING, ETC. (Contd.)

435.0583 Charges by a Carpet Retailer. A consumer provides a taxpayer with carpet remnants and contracts for the following labor and services:

(1) Cutting the carpet and attaching binding to finish the edges to make doormats.

(2) Adding a border of contrasting carpet to another piece of carpet to make an area rug.

(3) Cutting a completed rug into several pieces and finishing the cut edges with binding and fringe.

(4) Assembling a rug from carpet scraps both supplied by the customer and from the taxpayers scrap supply.

The work performed is for the fabrication of tangible personal property from customer furnished materials. As such, tax applies to the total amount charged for the labor and materials under Regulation 1526. 12/21/92.

435.0584 Colorways for Fabric Designs. A person who produces and sells production art (colorways) for fabric designs is a retailer of tangible personal property. The colorway is consumed in the process of producing the fabric and it is not incorporated into the fabric. The colorway is in the form of tangible personal property and, thus, its sales are subject to tax.

Also, a person hired by a customer to change the color of a colorway to create a new design is in fact producing a new design and, therefore, such work is a taxable fabrication sale. 1/31/90.

435.0585 Computer Additions. A computer company receives a computer, which was bought elsewhere, from a customer. The company produces and installs into the computer an amplifier.

If the computer is a new computer, sales tax applies to the entire charge for the installation of the amplifier.

If the computer is a used computer, and the amplifier simply amplifies the audio output of the computer and does not refit the computer for a use different from which it was originally produced, the charge for the amplifier and parts furnished to the customer is taxable. Tax does not apply to the charge for labor to install the amplifier. 4/13/92.

435.0595 Conversion of Black and White Video Tape. The conversion of a black and white motion picture on video tape into color is a taxable sale pursuant to Regulation 1526(a). The transaction is as follows: An owner of a black and white motion picture provides the converter with a black and white master on one inch video tape. The converter's personnel performs the following: (1) lists all scenes and contents thereof, (2) determines the overall scene by scene color strategy, (3) does research for photographs, contemporary colored motion pictures, etc.. This is done in order to find materials for reference during the color conversion process, to electronically color convert the black and white video tape in accordance with the reference materials, and to provide the owner with a color master on one inch video tape.

PRODUCING, ETC. (Contd.)

The work performed is a sale of tangible personal property rather than a service. Although a certain amount of thought, skill, and labor must go into the converter's conversion process, the true object of the contract between the converter and the owner is the color master video tape. 9/22/86.

(Subsequent statutory change re "qualified motion picture.")

435.0600 Core Samples. The sawing off of the ends of core samples in order to prepare them for use in making compression tests on concrete structures constitutes taxable fabrication under Section 6006(b). 11/9/67.

435.0620 Crushing. The crushing of materials furnished by a consumer constitutes processing, the receipts therefrom being subject to sales tax. Where a sub-contractor performs such crushing for a prime contractor with the United States the government ownership of the materials is immaterial and the processing charges are subject to tax. 2/24/56.

435.0640 Custom Airplane Interiors and Equipment. Outfitting a new plane received from the manufacturer with custom interior and additional electrical and electronic equipment to make it complete and ready for use constitutes fabrication of tangible property, which includes the removing and revamping of the floor, rewiring and modifying existing customer provided equipment to integrate it with the custom interior. Labor charges for the removal and replacement of equipment with more sophisticated equipment are exempt unless such charges were included in the charges for modification or change in the interior so that the more sophisticated equipment could be installed. The charges for preserving aircraft equipment, compliance with the manufacturer's service bulletins and adjustments of existing equipment, not being part of the addition of the custom interior and equipment, are not taxable. 4/6/65.

435.0650 Cutting Lumber. When a retailer sells lumber to its customers and charges them for cutting to size, such charge constitutes taxable fabrication labor. Thus, the total amount of the sale price of the lumber, including charges for the fabrication labor, is subject to the tax. Additionally, if the customers furnish lumber to be cut to size, the retailer's charges for cutting the customers' lumber are taxable as sales of fabrication labor. (Section 6006(b).) 2/6/96.

435.0655 Cutting or Punching Printed Paper. Cutting and punching the paper is a step that results in the creation of tangible personal property. Hence, tax applies to those charges if the cutting and punching are for a consumer. On the other hand, tax does not apply if the sale of the fabrication is for resale or exempt such as fabrication of a periodical the sale of which is exempt under Regulation 1590. 9/7/95.

435.0700 Cutting of Slots in pipe constitutes a taxable processing. 10/8/51.

435.0712 Die Alterations. As a general rule, alterations to a used die constitute taxable fabrication labor if the altered die is used to produce a new item of

PRODUCING, ETC. (Contd.)

property even though the property may generally be of the same type previously produced. An example would be modifying a die for a truck door to create a door for the new model year.

However, not every change in an existing die is treated as fabrication labor. The rework of a die is not taxable when some minimal change or configuration is made to the die by means of some change in the assembly of the die. That is, if a die is “programmable” in that parts can be disassembled, rearranged and reassembled, then that product is not treated as a new product, but as a previously finished product “tuned” to a new specification. If relocation of tooling parts occurs alone, this would be viewed as a nontaxable service charge. Where parts are added to the die, or where parts are physically reworked, the change constitutes taxable fabrication. Where there is relocation together with such a physical reworking of the die to cause it to be treated as a new product, the tax would apply to all charges made for changing the die. 3/19/84.

435.0717 Drawings of Jewelry Design and Wax Models. Charges to jewelers for drawings of a jewelry design which the jeweler uses as a visual aid for its customers to decide whether to purchase a piece of specialty manufactured jewelry are sales of tangible personal property and subject to tax. It makes no difference if the drawings are based on ideas of the artist or the jeweler. Likewise, the charges to a jeweler for a wax model sold to a jeweler for use in the lost wax process to manufacture jewelry are subject to tax. 10/28/96.

435.0720 Drilling Holes in Bowling Balls. The charge made for drilling holes in a new bowling ball constitutes taxable fabrication labor. Drilling holes in a ball constitutes a step in the manufacturing process of a finished article. 10/27/77.

435.0740 Drying of Lumber. The kiln drying or dehydration of lumber, furnished by consumers, constitutes a taxable processing. 2/2/51.

435.0755 Embroidering Used Clothing. Unless there is something unusual about the embroidery work (such as converting the clothing into a work of art), embroidering used clothing is similar to making repairs under Regulation 1546. As such, unless the retail value of the thread is more than ten percent of the total charge or the charge for the thread is separately stated, the charge for embroidery work on used clothing is not subject to tax. 5/15/92.

435.0760 Engraving of Bronze Panels. The charge an engraver makes a cemetery for the engraving of a bronze panel is a taxable processing charge for a consumer pursuant to Section 6006(b) of the Sales and Use Tax Law. The panel is not actually resold to the “purchaser”, who merely acquires a perpetual right to use realty belonging to the cemetery. The tax applies to the first engraving because the panel is essentially new when the engraving takes place. 2/26/52.

435.0780 Engraving of Double Urn. Tax does not apply to the second engraving of a double urn which is so constructed as to constitute a piece of personality and used a considerable time before second engraving. 12/17/51.

PRODUCING, ETC. (Contd.)

435.0800 Engraving of Jewelry. Charges for engraving jewelry before it is sold are not deductible from gross receipts subject to sales tax. If the engraving is done after the sale, the tax applies to the engraving charges unless done so long after the sale as not to be regarded as an essential part of or closely connected with the sale and the goods, in the meantime, have become used goods. This rule does not apply to charges for engraving on customers' used merchandise. 8/7/56.

435.0820 Experimental Street Sweeper. Company A, which is under an oral contractual agreement to manufacture, assemble, test and replace experimental parts for Company B, which is in the process of developing experimental street sweepers, is engaged in fabrication of the complete street sweeper. Thus, the charges made by Company A are subject to tax unless Company B is holding the sweeper for resale, in which case, the total amount charged by Company A, except that attributable to the experimental parts which are removed because they do not meet Company B's expectations, would be exempt as a sale for resale. 12/2/66, 12/27/66.

435.0821 Exposing Raw Film Stock. A photographer takes movies of newsworthy events on raw film stock furnished by a television studio. The photographer is paid only for the film used by the studio other than simply processing and reviewing it (the studio possessed and edited the film). Exposing of film to the news action is a form of fabrication pursuant to Regulation 1526. It is a step in the process of producing motion pictures films for showing on television. 7/9/71.

(Note: Subsequent statutory change re motion pictures.)

435.0822 Fabrication. A subcontractor has not made a sale if the subcontractor performs fabrication for a nonconsumer and furnishes no tangible personal property when performing that fabrication. The reason for this is that fabrication is defined as a sale only when performed for the consumer (Section 6006(b)). Since no sale occurs, the subcontractor does not need to take a resale certificate to establish that sales tax does not apply. However, it may be advisable to retain a resale certificate. This would provide the subcontractor some documentation showing that the fabrication was not performed for a consumer. 1/30/90.

435.0827 Falling Trees and Cutting Into Firewood. A taxpayer's customers initially obtain a permit from the California Department of Forestry or the appropriate federal authority to cut and obtain firewood for their personal use. Upon obtaining the permit, the customer gives it to the taxpayer who in turn cuts, splits, and delivers the firewood for the customer. The firewood which is delivered came from trees which the taxpayer cut down as well as previously fallen timber.

The taxpayer's splitting into firewood of fallen timber, including timber he has felled, constitutes a taxable sale under Regulation 1526(a). The taxpayer's customers furnished the material to be fabricated into firewood through a combination of the following two actions: (1) giving the taxpayer their permits to cut and obtain firewood; and (2) the taxpayer's later selection of the specific

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timber to be cut. The taxpayer subsequently fabricates the materials furnished by his customers to produce firewood which is tangible personal property. 7/11/83.

435.0830 **Fingerprinting.** The imprinting of customer's fingerprints on cards furnished by such customers and to be used by the customers in applying for various licenses constitutes an imprinting of consumer furnished material within Section 6006(b) and is a sale, the charge for which is taxable. 3/12/85.

435.0834 **Fingerprinting—Construction of a Mathematical Model.** The customer provides a fingerprint and the taxpayer translates it into a digitized image. During this step a mathematical model of "minutae" derived from the image of the fingerprint is created. This process is considered nontaxable development of original information from customer-furnished information under Regulation 1502(d)(5). "Minutae" refers to the location and interrelationship of those critical points within the fingerprint that allow fingerprint matching. 7/9/90.

435.0840 **Fireproofing** new fabrics furnished by customer is a taxable processing. 4/27/50.

435.0860 **Firing of Ceramics or China** furnished by consumers is regarded as a step in the production of the finished article and tax applies to the charge for such firing. 7/21/50 and 2/19/53.

435.0870 **Fitting Charges—Picture Frames.** Labor charges for fitting pictures into a frame are assembly (fabrication) charges, not installation charges. These charges are taxable. 1/10/92.

435.0874 **Folding Wiping Cloths.** The folding of wiping cloths constitutes a step in the production of tangible personal property into its final form and is taxable when done for a consumer. 7/15/83.

435.0880 **Handcarving of Stock of New Gun** constitutes taxable processing; not taxable processing if used gun is carved. 6/1/51.

435.0885 **Hand Lettering.** A person hand letters names and dates on documents, e.g., certificates awarded for achievements, etc., furnished by customers. The work is regarded as similar to an engraver's handwork in inscribing names and dates on trophies. The lettering is regarded as artwork. The charges are subject to tax. 9/16/75.

435.0900 **Handling Charges.** Charges for "handling" of asphalt by person who sells gravel for mixing with asphalt may be taxable. To the extent that the charge represents reasonable expenses for the labor and machinery and other costs of mixing the two products, the charge represents taxable fabrication labor. That portion of the charge which represents solely a charge for storage of property for buyer's convenience is nontaxable, but the charge should be allocated for tax purposes. 1/18/55.

435.0918 **Heat-Treating.** Heat-treating of customer furnished new material is taxable if the customer is a consumer of the treated material. If the customer is a fabricator or other contractor who is not the consumer of the item being made

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from heat-treated material, the process is not a “sale” and tax does not apply to the charge to this customer for heat-treating. 3/12/91.

435.0920 **“Heat Treating” New Pieces of Metal** constitutes a taxable processing. 3/18/52.

435.0930 **Irradiation of Property.** The application of tax to transactions involving irradiation of property furnished by customers is as follows:

(1) When the irradiation renders the material valuable for a new and different purpose, the transaction is subject to tax under Regulation 1526 unless the customer issues to the seller a resale certificate pursuant to Regulation 1668. For example, a particular drug or chemical which is to be resold may be made radioactive so that it may be used in its radioactive state for medical treatment or diagnosis.

(2) In instances where after the irradiation the appearance of the property has changed, the seller does not know if any value has been added and does not know the customer’s purpose for having the property irradiated. The transaction is subject to tax unless the customer issues to the seller a resale certificate. For example, a customer may submit gem stones for radiation and, although the radiation appears to alter the stones’ color, the seller does not know if any value has been added.

(3) In instances where there is a deterioration of the property as a result of the radiation, the transaction will be regarded as taxable processing if the seller does no more than expose the property to radiation even though the property will be of lesser economic value as a result of the radiation. Only if the seller furnishes to the customer a report with respect to the effect of the radiation on the property will the transaction be treated as a nontaxable testing service. 3/25/74.

435.0940 **Knurling and Sizing of Pistons, Fabricating.** The knurling and sizing of new pistons for consumers is a processing or fabricating, the charge for which is taxable even though performed by other than the seller of the standard size new piston. 3/23/65.

435.0960 **Lacquering** new film, charges for, are taxable, while charges for lacquering old worn and scratched film are nontaxable repair charges. 6/13/51.

435.0980 **Laminac Process.** The process of impregnating metal parts with Laminac, a polyester resin, to prevent microporosity, is a fabrication operation. Accordingly, if the parts are furnished by consumers, tax applies to charges for such processing. If the parts are furnished by persons who resell the impregnated parts, charges for such processing are exempt as receipts from sales for resale. Sales of Laminac to the processor for such purpose are exempt sales for resale. 1/25/66.

435.1000 **Laminating.** Gross receipts from the plastic laminating of membership cards, identification cards, etc., for consumers are taxable. 4/1/58.

435.1010 **Lettering on Trucks.** Charges for lettering a sign on a truck are not taxable whether the truck is new or used. 4/17/86.

PRODUCING, ETC. (Contd.)

435.1020 Library Services. The application of classification labels, card pockets and a college name stamped in the book, are not tax exempt professional library services. They are mechanical processing included within the definition of sale in Section 6006(b) of the Sales and Use Tax Law and are subject to tax as part of the gross receipts. However, the following are tax exempt professional library services:

- a. Bibliographical description of the book for classification purposes.
- b. Assignment of, or verification of, the Library of Congress classification number to each book.
- c. Inspection and verification of book card, pocket label and Library of Congress catalogue cards.

Records of receipts from taxable and nontaxable portions of contracts must be segregated in order to claim a deduction from gross receipts for nontaxable portions. 12/4/64.

435.1040 Map Mounting. The charges for mounting maps supplied by the customer on canvas backs previously purchased by him from the person engaged to do the mounting, are subject to sales tax since such an operation constitutes “producing, fabricating or processing.” 9/15/60.

435.1050 Meat Processors and Locker Plants. Meat processors and operators of locker plants who carve or dress meat, or clean and pick game birds, for consumption by customers who furnish the meat or the birds, are making processing “sales” under Section 6006(b), which are exempt under Section 6359. The purchase and sale of paper used to wrap the product for delivery to the customer are exempt under Section 6364. 5/6/76.

435.1056 Microscope Slides. An independent technician prepares microscope slides of rock samples which he takes from rocks received from customers. The slide is delivered to the customer and is used by the customer for research. The true object of the transaction is the microscope slide. Tax applies to the charges made by the technician. 4/22/85.

435.1060 Mixing. Mixing Bentonite with water to form a gelatinous mass to be used in fighting fire constitutes processing and is subject to the tax. 4/5/65.

435.1065 Mixing of Cement and Hazardous Waste. A firm furnishes a truck with a mixer and driver to a customer. The firm mixes cement with the customer’s hazardous waste to fabricate a solid which can be disposed of at a hazardous waste facility for solids. The total charge is subject to tax as fabrication labor.

Assertions that the driver and truck were “leased” to the customer are not borne out by the facts. There is no transfer of possession and control over the truck nor is there a lease. The firm is contracting to perform fabrication and is required to furnish all labor, materials, tools, equipment, facilities and services necessary to do the work. 1/13/93.

435.1070 Modification of New Equipment. Equipment as originally purchased was too tall and had to be shortened to an acceptable height. The work to shorten

PRODUCING, ETC. (Contd.)

the new equipment constitutes taxable fabrication and charges for parts and labor to effect the change are taxable. 12/7/89.

435.1080 **Mounting Gun Scope.** Mounting a scope on a new gun constitutes fabrication and the charges therefor are taxable. Mounting a scope on a customer's used gun constitutes installation labor and the charges therefor are exempt. 7/23/68.

435.1100 **Mounting Transparencies in Cardboard Mounts** constitutes taxable processing. 5/31/51.

435.1120 **Musical Arrangements.** The original manuscript of a musical arrangement is the work product of the arranger and its sale is not subject to tax. However, the preparation of multiple copies is considered the fabrication of personal property rather than the sale of services and the multiple sales would all be taxable. 11/10/64.

435.1130 **Negative Retouching.** Charges for retouching new photographs constitutes taxable fabrication labor.

If the retouched negatives are merely shipped to an out-of-state location prior to making any use of them in this state, on behalf of the purchaser, the sale is exempt from sales tax pursuant to section 6396.

However, if the customer's retouched negatives are used in this state to make prints, the sale of retouching is a retail sale in this state and subject to sales tax. 8/27/93.

435.1140 **Optical Coating.** High-vacuum optical coating, involving the evaporation of aluminum, fluoride and other materials on glass and plastics, is a taxable transaction when performed initially. The tax does not apply to charges for recoating. 3/24/55.

435.1160 **Packaging.** The sales tax applies to a charge made for packaging samples of taxable merchandise such as soap and cosmetics, the packaging materials and merchandise being furnished by the customer. Such packaging is a "sale" as defined in Section 6006(b). However, the charge for packaging exempt food products is not taxable. 12/5/58.

435.1166 **Painting Murals on Vehicles.** Charges to customers for painting murals on vehicles, whether the vehicles are new or used (60 days or more have passed since registration with DMV), are not subject to tax. It is not an operation which results in a creation or production of tangible personal property or a step in the process resulting in the production of tangible personal property. 11/15/88.

435.1180 **Perforating of Casing** constitutes a taxable processing. 1/24/52.

435.1200 **Planing and Ripping Lumber** constitutes taxable processing. 3/29/51.

435.1220 **Plating Charges.** Charges for chrome, nickel or alumulite plating applied to fittings supplied by customer, constitutes taxable fabrication labor when performed on new personal property, and the sales tax applies to the entire charge.

PRODUCING, ETC. (Contd.)

Where such work is performed for persons who will resell the article plated the tax does not apply.

Where such work is done upon used property so as to repair or recondition it, repair labor rather than fabrication labor is involved. 6/17/53.

- 435.1223 **Platinum Catalyst.** A refiner of petroleum products with refineries located in and outside of California sends platinum catalyst used outside of California to a processor in California for recovery and shipment of the new platinum catalyst to its California refinery.

If the platinum catalyst is received by the processor prior to the shipment of the new platinum catalyst to the California refinery, the principal contained in sections 6095 and 6245 apply. In other words, no use tax is due on the value of the platinum recovered as long as the refinery has sufficient tax paid recovered platinum inventory on hand with the platinum manufacturer to cover the amount of platinum used in the new catalyst. Only the processing charge is subject to sales tax. If there is not a sufficient amount of recovered platinum on hand, the value of any platinum added would also be subject to the sales tax. 4/22/71; 5/20/96.

- 435.1224 **Platinum Catalyst.** The following covers the application of sales and use taxes to transactions involving platinum catalyst.

(1) A California oil refiner orders one "load" of fresh platinum catalyst for use in California from a catalyst manufacturer located out of state. Title to the platinum catalyst passes upon shipment.

Use tax applies and the measure of tax includes the total amount for which the catalyst is sold, including the cost of the platinum component of catalyst.

(2) Same as (1), above. The refiner has paid tax upon one load of platinum catalyst. The catalyst is used in the refining process and after a period of time has become contaminated and thus becomes spent catalyst. The oil refiner returns it to the catalyst manufacturer who salvages the platinum component from the spent catalyst and manufactures fresh platinum catalyst from the salvaged platinum component. The oil refiner retains title to the platinum in the spent platinum catalyst. The platinum manufacturer then ships the fresh platinum catalyst to the California oil refiner.

This constitutes a fabrication of customer owned property under section 6010(b) and the measure of tax is the total amount for which the catalyst is sold, including any "salvage" or "recovery" charges made and any other charge made to the oil refiner. The measure of tax does not include the value of the platinum component of the spent catalyst furnished to the catalyst manufacturer. It is immaterial that the catalyst manufacturer might commingle the spent catalyst with spent catalyst owned by it or by another oil refiner or with other fresh platinum on hand.

(3) Same as (2), above, except that the catalyst manufacturer ships fresh catalyst to the refiner prior to the time the catalyst manufacturer receives, at its plant, spent catalyst owned by the refiner. Upon shipment of the fresh catalyst, the platinum manufacturer retains title to the platinum catalyst furnished and

PRODUCING, ETC. (Contd.)

charges rent until the spent catalyst is received from the refiner. If the spent catalyst received by the catalyst manufacturer balance the "platinum account" of the refiner, a catalyst manufacturer buys, on the open market, sufficient platinum to balance the account. When the account is balanced, title to the platinum component in the fresh catalyst passes to the refiner (and the rental obligation ceases), and title to the platinum component in the spent catalyst, or title to the platinum purchased from outside sources for the account of the refiner, passes to the manufacturer.

The transaction is subject to sales tax at the time title to fresh platinum passes to the refiner. The measure of tax includes the total amount for which the catalyst is sold, including the value of the platinum of the spent catalyst subsequently salvaged by the catalyst manufacturer.

Use tax also applies to the rental charge made for the fresh catalyst prior to the time of the sale of the fresh catalyst to the refiner.

(4) Same as (3), above, except upon shipment of the fresh catalyst to the refiner, the platinum manufacturer makes no "platinum account" entry and title to the second "load" of fresh platinum catalyst passes to the refiner upon shipment. The refiner returns the first "load" of spent catalyst to the catalyst manufacturer who salvages the platinum component of the spent catalyst and credits a "platinum account" it maintains in the name of the refiner. The refiner retains title to the platinum in the spent catalyst furnished by it to the manufacturer.

The application of tax is the same as in (1) above.

(5) Same as in (4), above. The oil refiner has paid use tax on the platinum component of the two "loads" of the platinum catalyst. The refiner maintains a "credit" balance of refiner owned platinum with the catalyst manufacturer. The refiner then orders a third "load" of fresh platinum catalyst. The catalyst manufacturer ships a fresh "load" to the refiner, depleting the refiner's credit balance. The refiner replenishes its platinum account by shipping the second "load" of platinum catalyst, which is now spent catalyst, to the catalyst manufacturer and refiner's "platinum account" is credited.

The application of the tax is the same as (2), above, assuming no intervening sale, purchase, or trade of the refiner's platinum pool maintained in the hands of the catalyst manufacturer. Tax applies only to the "fabrication" and "salvage" charges and does not include any "trade-in" value of the platinum in the spent catalyst returned to the catalyst manufacturer. 11/5/70; 5/20/96.

435.1227 Platinum Corporate Pool. An oil company has entered into a pooling arrangement with its various corporate subsidiaries in regard to platinum held by the platinum catalyst manufacturer. The oil company owns all of the platinum maintained in stock with the out-of-state catalyst manufacturer. The subsidiaries draw on this pool, exchanging platinum in their spent catalyst stocks for platinum in the fresh catalyst. Title to the platinum in the spent catalyst passes to the oil company when the platinum enters the pool. Title to the platinum in the fresh catalyst is in the subsidiary when it is in the subsidiaries' refining unit.

PRODUCING, ETC. (Contd.)

Under this arrangement, the acquisition of the platinum from the subsidiaries by the oil company is just as much a “purchase” as would be the acquisition of platinum directly from some other party.

Therefore, if the platinum is then brought into California, it would be subject to tax where the plutonium held in the pool was ex-tax. However, when the platinum pool is part “California tax-paid” and part “ex California tax,” the major oil company may bring into California for use here without payment of tax an amount of platinum equivalent to the amount of tax-paid platinum maintained in the pool at the time the withdrawal is made. 4/7/71.

435.1240 Printing and Hand Painting of Textiles furnished by customer constitutes taxable processing labor. 7/11/52.

435.1260 Printing and Inscribing—High School Diplomas. Inscribing names of high school graduates on diplomas constitutes a taxable sale under Section 6006(b). 6/24/68.

435.1263 Processing Green Waste. A firm is a wood recycler which operates inside a landfill. It processes green waste (leaves, trees, grass clippings, shrubbery, etc..) to be used by the county as an alternate daily cover for its landfill. It processes the green waste by chipping it into suitable cover. The cover material is delivered by truck to an active cell of the landfill and deposited at a designated point, but it is not spread onto its final resting place.

The chipping of the green waste is fabrication labor subject to tax pursuant to section 6006(b). 10/20/95.

435.1266 Processing of Scrap Dental Gold. The processing of scrap dental gold alloy to dental alloy is a fabrication process and the “fungible good theory” applies. Thus, tax applies only to the exchange price if the customer retains title to the scrap dental gold and customer furnished scrap gold was available for processing prior to the shipment of the recovered gold to the customer. The processing time may be ignored. To the extent that the processor does not have on hand, at time of shipment of new gold, gold resources equal to the new gold shipped to the customer, tax applies as measured by both the processing (refining) charge and the value of the trade-in gold. 4/8/71.

435.1270 Producing, Fabricating, etc.—Gamma Ray Exposure. The exposure of seeds, cuttings, bulbs, etc., belonging to others for the purpose of inducing mutations after germination is a processing subject to tax when performed for consumers such as colleges or experimental laboratories, unless the items being irradiated are seeds or annual plants the products of which ordinarily constitute food for human consumption or are to be resold in the regular course of business. 11/21/72.

435.1280 Purification of Beeswax. Tax does not apply to the charge for purifying beeswax, by removing foreign matter, where the identical wax is returned to the customer.

PRODUCING, ETC. (Contd.)

However, tax applies to charges made when the reconditioning of beeswax involves commingling the wax of several customers, so that each receives reconditioned or purified beeswax which may not be the identical property which was submitted for reconditioning or purifying. 4/7/50.

435.1300 **Quilting** constitutes a taxable processing. 11/1/51.

435.1320 **Rebuilding and Enlarging.** The rebuilding and enlarging of a cabin on a pleasure boat constitutes a repair or reconditioning operation, even if the cabin is larger and sleeping facilities are added, provided the boat remains a pleasure boat following the completion of the operation. Tax applies as provided in Regulations 1546. 2/2/51.

435.1340 **Rebuilding Batteries.** Rebuilding of batteries in which new material is installed, including plates, separators, spun glass insulation, and perforated rubber retention, constitutes the creation of a new battery, and charges for both material and fabrication labor are subject to tax. 6/25/53.

435.1360 **Recovering and Refining Metals.** The charges for recovering and refining metal from an exhausted petroleum filter gauze is to be included in the measure of tax. When a customer is billed for a replacement gauze at the time he returns the used one he is given credit for the value of the recovered metal and these charges are itemized. The price of the new filter gauze becomes the full price of the new filter minus the value of the platinum and rhodium recovered and refined from the old. Only the approximate value of the exhausted metal is excluded from the measure of the tax. 3/11/65.

435.1363 **Refining Crude Oil.** An airline purchases crude oil and contracts with a refinery to process the crude oil into aircraft fuel and other products. Because the aircraft fuel will be consumed by the airline, charges for processing the aircraft fuel are subject to tax. Charges for processing the other products are not subject to tax because the products will be resold by the airline rather than consumed. 7/17/85.

435.1363.200 **Regrooving Pipe.** A construction contractor purchased new pipe with grooves. The grooves were cut off by the purchaser because the grooves did not meet the specifications of the pipe joints. The cut pipe was then sent to a pipe servicing company to be regrooved.

The regrooving services are considered to be “fabrication” within the meaning of Regulation 1526. Such services are “. . . . step(s) in a process . . . resulting in the creation or production of tangible personal property.” The property ultimately being bought by the contractor consists of the regrooved pipes. The services rendered by the pipe service company are merely steps in the process of creating that property and the charge for the services of regrooving is subject to sales tax. 1/24/92.

435.1364 **Rekeying Locks.** A customer purchased locks which she took to a taxpayer for rekeying. The locks were recently purchased and had not been installed or previously used for the purpose intended.

PRODUCING, ETC. (Contd.)

In this case, the property, as purchased, was independently functional and operational for the use for which it was originally designed. However, the customer decided to have this newly purchased property fabricated to conform to the customer's specifications. As such, the rekeying operations constituted "a step in the process or services of operations resulting in the creations or production of tangible personal property," which, pursuant to Regulation 1526, constitutes taxable fabrication labor. The passage of time from purchase date to rekeying date is not relevant in determining the taxability of the rekeying charge. For example, if the locks had been purchased three years prior to the time they were rekeyed, but had never been installed, the rekeying operations would still be considered taxable fabrication labor. 7/28/95.

435.1365 Removing Lacquer and Polishing a New Article. Charges for removing a lacquer finish from new brass hardware and polishing the hardware articles represent charges for fabrication and processing of tangible personal property. Tax applies to such charges if performed for consumers. 6/21/91.

435.1380 Rental of Road Base Mixing Machine. The "rental" of a fully manned woodmixer machine for use in transforming raw materials into asphalt paving or cement treated road base will be regarded as a producing, fabricating and processing of tangible personal property where the evidence demonstrates that the equipment owner has retained the right to control the equipment operator or the details of the mixing operation. 1/22/65.

435.1384 Reprocessing Paint. A county has a recycling program in which individuals drop off unwanted paint at a county facility. The unwanted paint obtained from donors are mixed together at the county facility and sent to a paint manufacturer. The paint manufacturer mixes the paint obtained from the county with paint obtained from other sources and reprocesses this paint removing impurities, etc. The reprocessed paint is returned to the county where it is used by the county or given to individuals.

Since the county has paint obtained from many sources reprocessed by the paint manufacturer, the charge for processing the paint is subject to tax pursuant to Regulation 1526(a). 5/11/93.

435.1390 Rock Crushing. The crushing of rock for persons who will use the resulting crushed rock to determine if it is suitable for use in molds, constitutes taxable fabrication labor and not a service. 3/10/71.

435.1400 Roto Blasting of new pipe constitutes a taxable processing. 5/16/52.

435.1440 Sample Garment. Charges for fabricating a garment from cloth furnished by a customer, who then shows the sample to possible subcontractors are taxable. The sample garment is used by the taxpayer's customer for purposes of preparing patterns, selecting materials and quantities, and is then sold to an employee of the customer. Since the garment is not used for demonstration or display by the taxpayer prior to resale to its employee, the fabrication labor is taxable. 1/13/67.

PRODUCING, ETC. (Contd.)

435.1460 Screening and Separating of Rock. When materials furnished by the customer are separated according to size, e.g., rock, gravel, whether by screening, hand sorting or otherwise, this operation alone does not amount to a taxable fabricating or processing.

On the other hand, the crushing of rock or mixing of it with other ingredients is considered taxable processing. If there is such processing involved, the total charge therefor would be taxable unless some specific portion of the material is only sorted or separated and the charge for such sorting and separating can be separated from the charge for taxable processing. Only in that case would the charge for sorting and separating be excluded from the measure of the tax. 11/14/66.

435.1477 Shoe Alterations. The addition of dance or protective taps to new shoes constitutes fabrication labor subject to tax, even though the customer supplies both the shoes and the taps, because it is a step in the creation of the desired product, i.e., new shoes with taps. The application of taps to previously worn shoes is not taxable because it is installation labor, excluded from gross receipts by section 6012(c)(3). The labor to remove worn taps from used shoes and replace them with new taps is a nontaxable repair operation as it makes the shoes again suitable for their original purpose. 8/19/94.

435.1480 Shoes. Where orthopedic correction work is performed on new shoes the charge therefor is taxable fabrication labor. 12/17/54.

435.1500 Shirring of New Drapes, tax applies to labor charges for. 4/25/51.

435.1520 Ski Bindings. The attachment of bindings to new skis is regarded as taxable fabrication labor. 6/5/68.

435.1540 Slitting and Sheering Steel constitutes taxable processing. 6/27/51.

435.1580 Steel. Charges for drilling holes in, or flattening angles, or cutting steel into desired lengths, for a customer who furnishes such steel, constitutes taxable fabrication labor. 6/2/53.

435.1600 Steel. The fabrication of precast steel piling to be emplaced by another contractor constitutes a taxable sale of personal property in that the transaction involves the fabrication of such property for the emplacing contractor who is the consumer using it to improve real property. 2/21/55.

435.1620 Stones, tax applies to charges for: drilling holes in stones; mounting stones in rings not previously having had stones mounted therein; processing rough stones into finished products. Tax does not apply to charges for: cutting or slabbing of rough stones for inspection purposes only; redrilling of stones in order to make minor modifications in the size of the hole; mounting stones in used rings previously having had stones mounted therein. 10/18/50.

435.1640 Styling of Wigs. Charges for cutting, sizing, styling, and coloring new wigs are includable in the measure of the tax. The exemption in Section 6012 “for labor or services used in installing or applying the property sold” applies

PRODUCING, ETC. (Contd.)

only to labor expended in attaching or adapting the purchased property to or for a specified site, in other words, emplacement. However, the charges for restyling of used wigs are exempt. 11/30/66.

435.1650 **Supervision.** When a person supervises the fabrication of tangible personal property supplied directly or indirectly by the customer, and that supervision is considered to be a necessary component of the fabrication, the supervision is considered to be a part of the fabrication of tangible personal property. On the other hand, when a person provides consulting services only, without having control over the performance by others of the fabrication, such consulting services are not regarded as part of the fabrication. 1/12/90.

435.1655 **Tank Production.** A taxpayer in the business of manufacturing petroleum products “revamps” tanks by taking a customer’s three 27,000-gallon tanks and remaking them into six 13,500-gallon tanks. The labor to produce six tanks out of three constitutes the creation of a new product and is not merely repair or reconditioning of the old tanks. The taxpayer’s cutting the original tanks in half, adding new bottom heads and cone tops, new fittings, new lift lugs, new labels, new coatings and linings, and some or all new seismic clips, with appropriate welding is fabrication labor under section 6006(b). Charges for the labor to produce the six tanks are subject to tax. 5/6/99. (2000-1).

435.1660 **Tanning of Hides** constitutes a fabrication or processing. 1/2/51.

435.1666 **“Tape Reel.”** A company contracts with an outside vendor to package electronic components into a form called a “tape reel.” The company supplies the vendor with loose components that are eventually returned to the company and are incorporated into a finished product which is sold by the company. The vendor uses a machine to align the individual components side by side into a linear sequence which is specified by the company. The vendor attaches two strips of adhesive tape to the components, one strip linking together one end of the components and the other strips linking together the components’ opposite end. The end result is the production of a large “reel” which resembles a ladder. The “reel” is transferred into a machine which cuts the components off the adhesive strip and automatically places the electronic components on printed circuit boards. The adhesive strips are subsequently discarded by the company.

The uniting of the individual electronic component parts by the company’s vendor into a “tape reel” by taping the components together into a specified sequence constitutes “fabricating.” The purpose for placing adhesive strips on both sides of the components is to ensure the proper order and alignment of the individual components and to convert the individual unit into a form which is usable by the company in the manufacturing of printed circuit boards. Although the individual components become incorporated into the finished product which is sold by the company, the “tape reel” itself is not resold by the company. Accordingly, the vendor fabricates customer furnished tangible personal property and this fabrication results in a taxable sale. The measure of tax is the vendor’s gross receipts from the sale. 1/18/84.

PRODUCING, ETC. (Contd.)

435.1680 **Television Sets.** conversion of used sets to larger screen size is regarded as repair or reconditioning, not as fabrication, and tax applies to charge for materials only, if separately stated. 1/12/50.

435.1700 **Tennis Rackets.** Where a person brings into a shop the frame and gut for the original stringing of a tennis racket the sales tax applies to the entire charge made for stringing the racket, even though no additional parts are furnished.

Where a used racket requires restringing and the customer furnishes the gut which will be used, the labor charges involved constitute exempt repair and reconditioning labor. 2/25/54.

435.1720 **Test Bars.** The machining of steel test bars which are used to test and determine tensile strength and physical properties of castings, constitutes fabrication and the charge for machining is subject to tax. It is immaterial that the test bars are subsequently scrapped and either sold or remelted. The machining of the bars is not for the purpose of sale, but rather for the purpose of test usage. 1/4/54.

435.1726 **Transfer of Exposed Film.** Newspapers will often employ photographers as independent contractors to provide them with photographs or exposed film. Sales tax applies to such amounts received by the photographer since the object of the transaction is the delivery of tangible personal property, such as exposed film. 7/30/93.

435.1730 **Transfer of Information from One Tape to Four Others.** A firm is in the business of manufacturing and embossing credit cards for financial institutions. The information to be embossed is obtained from the financial institution on a data processing tape. Occasionally the firm's equipment cannot read the financial institution's tape because it is incompatible with the firm's equipment. In order to make it compatible with its equipment, the firm transfers the information on the tape to four tapes. In these cases, it makes a separate charge to the financial institution for "interim tape processing."

This charge is not a charge for processing customer furnished information as described in Regulation 1502 (d)(5). The contract with the financial institution is a contract to produce credit cards. The restructuring of the information is merely one step in the manufacturing process. The separately stated charge is part of the gross receipts from the manufacture of the credit cards. 5/13/93.

435.1740 **Trophy, Engraving on.** The first or initial engraving on a trophy is regarded as performed on new merchandise and taxable. The addition of subsequent names of winners of contests or the like after the trophy has been on exhibit or otherwise devoted to the use for which it was ultimately intended constitutes an engraving on used merchandise and exempt. 7/27/51.

435.1743 **Vehicle Window Tinting.** A person who tints the windows of a new vehicle for a customer who has purchased the vehicle from a new car dealer is performing a step in the process of producing a finished product. The tinting operation constitutes taxable fabrication labor. 10/24/89.

PRODUCING, ETC. (Contd.)

435.1745 **Video Tape.** The transfer of (existing) motion pictures to video tape cartridges owned by the customer is regarded as producing, fabricating and processing of tangible personal property, and is therefor a taxable sale made by the recording company. 10/16/78.

435.1747 **Video Transfer.** The charge for taking a customer's personal snapshots, slides, home movies, etc., and transferring them to video, adding music and organizing the flow of the video is included in gross receipts from the sale of tangible personal property. Therefore, the total charge is subject to tax. 7/11/91.

435.1760 **Fabric Purchased Suit.** Where fabric is purchased from an importer and subsequently taken to a tailor to be made into a suit, the entire amount charged by the tailor to create the suit is taxable fabrication labor. Thus, tax applies to both the purchase of the fabric and the charge made by the tailor for labor.

If the tailor purchases fabric and makes a complete suit, the total sales price of the suit is taxable without any deduction for materials, labor or other expenses. 8/25/53.

PROMOTIONAL MATERIAL

See Gifts, Marketing Aids, Premiums and Prizes; Trading Stamps and Related Promotional Plans.

PROOFS, REPRODUCTION

See Printing and Related Arts.

PROPERTY

See Buildings and Other Property Affixed to Realty; Tangible and Intangible Property.

440.0000 PROPERTY USED IN MANUFACTURING—Regulation 1525

See also Fur Dressers and Dyers. "Special tooling", see also United States Contractors. Water additives, see also Gas, Electricity and Water.

(a) MANUFACTURING AIDS**(1) IN GENERAL**

440.0010 **Application of Tax.** If a taxpayer purchases manufacturing aids in a transaction that is subject to sales tax, that taxpayer's subsequent use of the aids to make a finished product is not subject to use tax. There are, however, circumstances in which both the sale and the use of the aids can be subject to tax. If the property is purchased under a resale certificate and the taxpayer makes any use of it other than retention, demonstration or display while holding it for sale in the regular course of business, that use is taxable to the taxpayer. If the taxpayer sells the same property at retail in California after using it, the sale will also be taxable. 3/1/90.

PROPERTY USED, ETC. (Contd.)

440.0020 Basic Application of Tax. The tax applies to the sale of any manufacturing aid which the manufacturer uses before passing title thereto to his customer.

An important consideration to the taxability of any sale is whether the purchaser of the property sold sells it before he uses it or sells it after he uses it, or purchases it in the capacity of agent. Where property is used before it is sold, the tax applies upon the sale to the user. Where the property is sold before it is used, the sale to the person who sells it before use is not taxable since it is a sale for resale.

Where the person who uses tooling or other manufacturing aids purchases it as agent of another, the sale to the agent is taxable for that is a sale to the principal, but there is no further tax due when following use the agent turns over the tooling or other aid to his principal, since there can be no sale between a true agent and his principal.

If there is more than one retail sale of tooling, the tax applies to each retail sale, unless for some other reason there is an exemption such as the exemption of sales to the United States. 1/31/51.

440.0040 Basic Application of Tax—Purchasing as Agent or for Resale—Evidence. X, a manufacturer of aircraft parts under contract with Y, an aircraft manufacturer, purchased materials to fabricate tooling which it used to manufacture the parts. X paid use tax on the cost of the materials, claiming to have purchased them as agent, and that it did not actually sell the tooling to Y. It was, however, concluded that X actually sold the tooling to Y and was liable for tax on the selling price of the tooling under evidence that: Y depreciated, and took an investment credit on, the tooling; X, under its contract, retained legal title to the tooling as security for payment of the price; X charged for the tooling the charge including fabrication labor, materials, overhead and general administrative costs, and profit. Under the contract Y had all the benefits of ownership in the tooling, and a rigid right of control over its use and disposition by X, who was referred to as contractor and supplier of tooling. 4/7/70.

440.0045 Basic Principles in Determining Purpose for Purchase. In determining the primary purpose of a manufacturer's purchase of chemicals, the fact that the chemicals have a beneficial effect on the manufacturer's finished product is not determinative. Any chemical utilized by a manufacturer during the manufacturing process, regardless of whether it is purchased for use as a manufacturing aid or for incorporation in the final product, will necessarily have some beneficial effect on the final product. Otherwise, the manufacturer would not utilize the chemical at all. In order to prove that the primary purpose is incorporation into the finished product for resale, therefore, it must be shown not only that the chemical has beneficial effects, but also that such effects result from the physical presence of the chemical in the finished product and not merely use of the chemical in the manufacturing process.

For the same reason, proof that a chemical remains in the finished product is also not determinative. If the physical presence of the chemical in the finished

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product has little or no beneficial effect, there is no basis for concluding that the chemical was purchased for the primary purpose of resale as a component of the finished product. On the other hand, if use of the chemical during the manufacturing process brings about chemical or physical reactions which benefit the finished product, it is reasonable to conclude that the chemical was purchased for the primary purpose of causing such reactions during the manufacturing process even though the chemical happens to remain in the finished product. 6/28/83.

440.0046 Drawings of Jewelry Design and Wax Models. Charges to jewelers for drawings of a jewelry design which the jeweler uses as a visual aid for its customers to decide whether to purchase a piece of specialty manufactured jewelry are sales of tangible personal property and subject to tax. It makes no difference if the drawings are based on ideas of the artist or the jeweler. Likewise, the charges to a jeweler for a wax model sold to a jeweler for use in the lost wax process to manufacture jewelry are subject to tax. 10/28/96.

440.0046.500 Fungicide Removed During Manufacturing. A firm applies a fungicide to lumber. It surfaces the lumber and, in the process, it removes all of the fungicide. The shavings from the surfacing process which contain the fungicide are sold. The primary purpose of the fungicide is to protect the lumber during the manufacturing process. The sale of the fungicide to the manufacturer is subject to tax even though the fungicide may remain in shavings which are sold. 5/8/97.

440.0047 Government Royalty Crude. An oil processor acquires crude oil from the United States. The crude is not available at a facility where it is feasible to transport it to the processing plant. The firm exchanges the crude oil for crude from another processor. Subsequently, it burns some of the fuel oil which it produces from the exchanged crude.

The use of the crude oil by the processor is subject to tax. The fact that it initially acquired crude from the United States is immaterial. The oil consumed was that acquired under an exchange agreement with another processor. Thus, the oil consumed was purchased from the processor and not the United States. 1/22/90.

440.0049 Manufacturing Aids. Regulation 1525.1 discusses when title to a manufacturing aid passes to the manufacturer's customer. However, before this issue is relevant, it must be determined that title to the manufacturing aid actually passes from the manufacturer to its customer. When possession of the tooling is retained by the manufacturer, this issue often presents a difficult question of fact which must be determined on a case by case basis.

For example, a manufacturer purchases raw materials for resale and fabricates those raw materials at the specific request of its customer into a manufacturing aid. The manufacturing aid is of unique utility to the particular customer for whom the associated production work is being performed and the manufacturer separately itemizes a specific charge for the manufacturing aid to the customer. If (1) the customer's name is put on the pattern and a file maintained for its location,

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(2) the customer's name and part number is on the pattern or die, (3) the customer makes repeated orders for items to be produced by use of the same aid, (4) the manufacturer insures the manufacturing aid against loss for the benefit of the customer, or (5) the manufacturer establishes that it orally stated that the customer may have the manufacturing aid upon request, the manufacturer will generally be regarded as having sold the manufacturing aid to its customer.

However, the contract between the two parties must be examined. Generally, if the contract specifically provides that the manufacturer retains title, then it is rebuttably presumed that no sale of the manufacturing aid occurred, regardless of the existence of any of the factors set forth in the previous paragraph. This presumption is rebutted by, among other things, the inclusion of an exclusive use clause (i.e. a clause providing that the manufacturer's customer has the right to exclusive use of the manufacturing aid), if the manufacturing aid is used to fill multiple orders for items produced by the manufacturing aid. 4/3/03. (2004-1).

440.0052 Methylene Chloride. The role of methylene chloride in the manufacture of dry ink toner is limited to its use as a source of certain essential ingredients which become incorporated as a component part of the dry ink toner. Therefore, tax does not apply even though a large portion of the methylene is lost through evaporation, since the portion lost is used only for the purpose of incorporating the remaining property into the end product. 4/6/83.

440.0054 Passage of Title to Tooling. Sales Tax General Bulletin 50-24 (appended to Regulation 1525) deals with the time of passage of title to tooling and not with the issue of whether there was passage of title. Whether or not title to tooling passes is a question of fact in each case. The question as to who has title to the tooling is a question as to the terms of the contract for sale of the parts which are produced by the tooling. The fact that tooling was not delivered to the customer and that there is no formal recognition that the manufacturer is the bailee of the tooling is evidence that the tooling was not sold, but rather was used by the manufacturer. 2/17/77.

440.0055 Potassium Permanganate—Water Treatment Plant. Potassium Permanganate, which is used in water treatment plants, is removed as part of the plant sludge after serving its purpose. Thus, this product is a manufacturing aid the sale or use of which is subject to tax. 8/14/72.

440.0055.140 Property Purchased for Resale or Use in Manufacturing. The following are some guidelines in determining whether property is purchased for resale or for use in manufacturing:

(1) Tangible personal property is regarded as having been purchased for the purpose of use in manufacturing tangible personal property and not for the purpose of being physically incorporated into the manufactured article to be sold, if the property is first utilized as an aid in the manufacturing process prior to being resold as an end product. Independent intervening use of the purchased tangible personal property as a manufacturing aid prior to its resale is subject to tax, notwithstanding the fact that the tangible personal property also was

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purchased for the purpose of incorporation into an end product which is sold. For example, see annotations 440.0840, 440.1260, 440.1460, and 440.3120.

(2) Tangible personal property is regarded as having been purchased for the purpose of incorporation into the manufactured article to be sold even though a portion of the property is lost or discarded as waste. For example, a manufacturer of furniture purchases wood to be used in the construction of furniture to be sold. A portion of the wood is destroyed or discarded as a result of the manufacturing process and does not actually become a part of the furniture. The purchase of the wood is not subject to tax.

(3) Tangible personal property is not regarded as having been purchased primarily for resale, but primarily for the purpose of use in the manufacturing process, if the property is only incidentally incorporated into the manufactured article, e.g., the property does not become a recognizable and identifiable component which is of some benefit to the end product to be sold. For example, see annotations 440.1340 and 440.1820.

(4) During the manufacturing process, tangible personal property may perform some beneficial use as a manufacturing aid, but may also become incorporated into the product to be resold. When tangible personal property is purchased and used for more than one purpose in the manufacturing process, the application of tax is dependent upon the primary purpose for which the tangible personal property is purchased.

Tangible personal property is regarded as having been purchased primarily for the purpose of incorporation into the manufactured article if the property becomes an essential ingredient or component part with a beneficial purpose in the end product which is sold. Tax does not apply to the sale of tangible personal property which is purchased primarily for the purpose of incorporation into the manufactured article to be resold, even though the property may be used incidentally as an aid while it is being incorporated or attached in the manufacturing process.

(5) Tangible personal property is regarded as having been purchased primarily for the purpose of incorporation into the manufactured article to be sold, even though a component or component parts of the property may be used in the manufacturing process and not resold as an ingredient or component part of the finished article, if the component(s) which are used in the manufacturing process are used only for the purpose of incorporating the remainder of the property into the end product to be sold.

(6) Where a portion of the tangible personal property is purchased for the purpose of use in the manufacture of tangible personal property, and another portion of the tangible personal property is purchased for the sole purpose of incorporation as an essential ingredient or component part of a manufactured article to be sold, tax applies only to the sale of the property purchased for the purpose of use. The purchaser must keep records which establish to the satisfaction of the Board what portion is resold and what portion is used. For example, see annotation 440.0640.

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(7) Tax applies to the sale of tangible personal property to manufacturers and refiners who purchase the property for the purpose of use or consumption in the manufacturing or refining process. Where the manufacturer or refiner uses or consumes a byproduct of a joint product which is produced in a manufacturing or refining process, tax applies to that portion of the purchased raw material which comprises the used or consumed byproduct, unless such use or consumption is otherwise exempt from taxation. The measure of tax on self-consumed byproducts shall be determined in accordance with the guidelines as provided under Regulation 1525.5. Tax would apply even though the self-consumed byproduct is subsequently resold by the manufacturer or refiner, since it was purchased for the purpose of use, rather than for resale. 5/22/87.

440.0055.200 Protective Covers. Plastic covers installed by an auto manufacturer to protect seats of new vehicles during the manufacturing process are used by the manufacturer notwithstanding that they are ultimately sold to the dealer. They are not purchased for the purpose of being incorporated into the property sold. 5/10/93.

440.0056 Resold Prior to Use—Resale Certificates. Special manufacturing aids are sold by a manufacturer to Customer A who will resell the product produced through the use of the special manufacturing aid to Customer B. Tax applies to the manufacturing aids as follows:

(1) A specific resale certificate is given to the manufacturer stating that the special manufacturing aid is purchased by Customer A for resale. Sales of the special manufacturing aids are allowable as sales for resale since Customer A issued a resale certificate for the items. If, however, the items were used for the benefit of A prior to A's sale of the items to B, then A would be liable for payment of use tax measured by its purchase price of the property. The above applies regardless of whether A or B are located outside of California and neither holds a California seller's permit.

(2) The resale certificate issued by Customer A refers to each purchase order for guidance as to the tax status on items being purchased. The purchase order calls for a manufactured product and also for tooling. The order is merely marked "resale" without distinguishing between manufactured products and manufacturing aids. In this situation, the receipts from the sale of the manufacturing aids to Customer A are subject to tax unless the manufacturer establishes that A resold the special manufacturing aids prior to their use in the manufacturing process. The blanket resale certificate is ineffective for purposes of relieving the manufacturer from the burden of establishing that the sale of the manufacturing aid was not a sale at retail. 6/24/75.

440.0058 Title to Tooling. A manufacturer of door knobs designs and fabricates the tooling to be used in the manufacturing process when a customer orders a new style of door knob. The customer's purchase order typically includes language to the effect that the customer has both title and a right to possession in the tooling, but the manufacturer shall retain possession for use in performing the job. The

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customer insists on these provisions to ensure that the designs will not become available for use by its competitors. The customer is billed separately for the tooling.

The manufacturer contends that, despite any contrary language in the sale document, it did not intend to pass title in the tooling to the customer since the tooling may contain clues to the manufacturer's manufacturing process, which the manufacturer considers a trade secret and does not want to reveal to its customers. Therefore, the manufacturer has never transferred possession of the tooling to any customer and would never do so even if the customer demanded possession.

Under the above circumstances, there is a sale of tooling from the manufacturer to the customer since the sale documents expressly provided that title in tooling would pass to the customer. Only when the terms of the contract are uncertain and ambiguous is it proper to look at extrinsic evidence to ascertain the parties' intent. 4/4/89.

440.0059 Tooling. A company is in the business of designing and manufacturing door knobs. The major customers are lock manufacturers who apparently incorporate the knobs into lock sets for sale under their own brand names. Each time a customer orders a new style of door knob, the company must design and fabricate the tooling to be used in the manufacturing process. The customer's purchase orders typically include language to the effect that the customer has both title and right to possession to the tooling, but that the company shall retain possession for use in performing the job. The company has never transferred possession of the tooling to any customer. The company bills the customers for tooling in two distinct ways: (1) a lump-sum charge for the material cost which is labeled a "gage charge" or "tooling charge," and (2) the charge for design and fabrication of the tooling is billed under the label "knob development charge" or "development service charge."

The sales documents expressly provide that title in the tooling passes to the customers. Since the contracts expressly provide that title in the tooling passes to the customers, title does pass and tax is due on not only the gage share or tooling charge (material costs) but also on the charges for the knob development charge or the development service charge (design and fabrication of the tooling). 4/4/89.

440.0060 Total Manufacturing Process—Gasoline Distillate. Where, during the process of refining petroleum products, gasoline distillate is derived from the process, run through pipes to pick up wax, and is later refined and sold (as is the recovered wax), the purchase of the distillate or the products from which it is refined is not subject to tax as self-consumed. The process of running the distillate through the pipes is part of the total manufacturing process. 7/16/64.

(2) THINNERS, SOLVENTS, REDUCERS, CARRIERS

440.0075 Acetone. Acetone, as used in the ceramic industry, is generally a solvent and its sales are subject to tax. 7/17/56.

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440.0080 **Alcohol.** Anhydrous Solox (denatured alcohol) sold for purposes of use as an ingredient of ink, is primarily a carrier for the ink during printing process, and is a manufacturing aid the sale of which is subject to sales tax. 2/17/54.

440.0100 **Anhydrous Filmcol** (alcohol) used in thinning white ink which is applied to the back of carbon paper which evaporates soon after the ink is applied to the paper is regarded as consumed rather than resold with the carbon paper. 3/26/52.

440.0103 **Benzol.** Benzol, as used in the ceramic industry, is generally a solvent and its sales are subject to tax. 7/17/56.

440.0109 **Cyanides.** Silver cyanide, copper cyanide, zinc cyanide and similar metal salts are used in electroplating. The ions in the metallic salt become plated on the finished product to be sold, and, thus, may be purchased for resale. 7/17/56.

440.0110 **Cyclohexanon.** Cyclohexanon is utilized in the manufacture of magnetic recording tape. The chemical is added in a batch mix prepared to manufacture the coating applied to raw magnetic tape. The chemical functions as a solvent in the mix and also as a reaction tool for certain other mix components. Additionally, it serves to make the end product, the magnetic tape, softer and of higher quality, but there is no indication that this is the result of the incorporation of the cyclohexanon into the magnetic tape.

Approximately three percent of the chemical added to the batch mix remains with the end product in a combination of residual solvent and in the reaction product. The manufacturing residue or “runoff” of the chemical is recycled and repeatedly reused until the chemical substance is depleted.

For the manufacture of magnetic recording tape, Cyclohexanon is used repeatedly as a solvent in the manufacturing process. This utilization of the property is for a purpose other than incorporation into the end product. Property which is purchased for the purpose of use in the manufacturing process is not thereby exempt from the tax by reason of some part remaining in the end product (*American Distilling Company v. SBE*, 55 Cal.App.2d 799). Thus, the purchase of Cyclohexanon for use in the manufacturing of magnetic recording tape is taxable. 10/26/73.

440.0120 **Ink Thinner.** Sale of ink thinner to printers is subject to sales tax if the thinner evaporates from the paper and is therefore not resold with the paper. 10/19/53.

440.0134 **Light Crude Oil—Diluting Medium.** Light crude oil which is placed in oil wells to act as a diluting medium so that the heavy crude can be handled by well pumps is not purchased for resale. Even though the light crude remains in the product ultimately refined, the primary purpose of purchasing the light crude was completely fulfilled as soon as it served its purpose of facilitating the pumping of the heavier crude from the well. Thus, the purchase price paid for the light crude oil is subject to sales or use tax. 11/29/50.

PROPERTY USED, ETC. (Contd.)**440.0140 Methyl Ethyl and Methyl Isobutyl Ketones and Trichlorethane.**

Methyl Ethyl and Methyl Isobutyl ketones are flammable solvents used in applying oxide coating to magnetic tape and Trichlorethane, a non-flammable solvent used for thinning the lubricant which is applied to the oxide coating, are taxable manufacturing aids. 11/15/66.

440.0160 Methyl Ethyl and Methyl Isobutyl Ketones and Trichlorethane.

When the solvents methyl ethyl ketone and isopropyl alcohol are used in the production of phenolic resin, they do not become part of the finished product and are taxable manufacturing aids. 12/16/69.

440.0163 Normal Methyl Pyrrolidine (NMP).

In connection with a “solvent extraction” plant, a corporation purchases Normal Methyl Pyrrolidine (NMP) solution ex-tax from out-of-state retailers. Feed stock, a form of crude oil which has been refined somewhat through other separation processes, is termed “vacuum gas oil.” The feed stock is combined with the NMP solution with the intention that the solution will assist in the removal of impurities from the oil and assist in the separation of the aromatic and nonaromatic oils. The primary intent is to use the NMP solution as a separation of the two types of oils and also as an agent for removal of impurities.

The NMP solution is being purchased with the dominate consideration being to make a use of the solution as a separator, not to incorporate the chemicals into the final product. The fact that the NMP solution may indirectly enhance the final product does not have any influence in making the decision to purchase the solution. The fact that 99.6% of the NMP solution is potentially recoverable for reuse and the fact that the corporation is constantly seeking to reduce the amount of solution which is absorbed into the final product lend support that the solution is purchased as a manufacturing catalyst, not to be incorporated into the final product. The major significance is the fact that the corporation purchases and uses the NMP solution for its separation qualities and its abilities to remove impurities from the feed stock oils. The corporation is thus the consumer of the NMP solution purchased for use in its refining processes and the use tax is due on the cost of the chemicals. 1/14/91.

440.0165 Packing Material—Title Passage.

When a moving and storage company has a contract with a customer which includes a notation “Customer agrees that title to all packing material passes to customer before any use of such material is made,” “title” is considered to pass to the customer prior to any use. This is true without regard to whether or not the charge for the packing materials is separately stated. 6/29/95.

440.0180 Paint Thinner.

Sales of paint thinner to manufacturers who mix the same with paint solids and apply to articles being manufactured, are not sales for resale and are taxable. The thinner is generally lost by evaporation before the painted article is sold. 3/30/53.

440.0200 Paint Thinner, Abrasives, Cleaning Compounds, and Masking

Tapes, sales to persons who paint automobiles to be sold are regarded as sales at retail and subject to tax. 7/25/50.

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440.0225 **Rubber Cement.** If a manufacturer purchases solvent to manufacture rubber cement and in turn uses the rubber cement to manufacture tires, the solvent is not purchased for resale since it evaporates before the tires are sold. On the other hand, if the tire manufacturer purchases rubber cement which includes solvent, it is the rubber cement that is purchased, not the solvent. The rubber cement may be purchased for resale even though the solvent contained therein may evaporate. 2/4/47.

440.0240 **Thinner.** Lacquer thinner utilized for thinning the lacquer applied to picture frames evaporated soon after application and hence does not become a permanent part of the picture frame. Accordingly, sale thereof to a manufacturer of picture frames is not for resale and is a taxable retail sale. 1/11/55.

440.0241 **Thinning Solvent—Photoplate Manufacturing.** Thinning solvent purchased to dilute a photoresist compound used in the manufacturing of photoplates used by integrated circuit manufacturers is virtually entirely dissipated during the baking process. Approximately two to ten percent of thinner remains on the photoplate. The photoresist compound purchased consists of from 60 to 80 percent thinner.

The thinning solvent, which is purchased separately, is added so that the compound will be spun on the glass plates in the proper thickness. While a minute quantity of thinner remains on the finished product, that is not the “principal purpose” for which the thinning solvent was purchased. Accordingly, the purchase of the thinner is taxable. 8/27/84.

440.0243 **Tooling Supplied by Customer.** An out-of-state customer furnishes tooling to a California manufacturer for use by the manufacturer in producing goods for the customer. The California manufacturer has no liability for any tax that may be due with respect to the tooling, provided the manufacturer did not fabricate or purchase the tooling. 5/27/88.

(3) MATRICES, MOLDS, MODELS

440.0260 **Lace.** A manufacturer of ceramics purchases lace for use as a framework or pattern for the porcelain and glaze from which figurines are made. During the firing process, the lace is reduced to gas (there may be a small ash residue). The lace does not perform any useful function except as a pattern for the formation of the porcelain lace during the firing process. The figurine is sold clothed in a gown of porcelain lace which results from the manufacturing process, and there is no trace of the cloth lace remaining as a component part. The manufacturer is purchasing the lace for use, and not for resale. 9/27/50.

440.0270 **Markers.** A clothing manufacturer provides a person with a cardboard pattern of a clothing design (hardcard). Using the hardcard, the person devises a pattern or “layout” for cutting material that will minimize waste. The “layout” is drawn or traced on heavy paper (marker) which is transferred back to the manufacturer. The “marker” is then used by the manufacturer to make a tissue copy (flimsy) of the pattern. The marker is reusable and can be used to make as many flimsies as necessary. The flimsy is placed directly on the material and used

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as a template to guide the cutting. The true object of the contract between the manufacturer and the person is the property acquired, i.e. the “marker.” Therefore, the entire charge for fabricating the marker is subject to tax. 11/30/90.

440.0280 **Matrix Material and Resin Powder.** “Matrix Material” and “Phenolic Resin Powder,” used in conjunction with a rubber compound and canvas backing in the production of rubber printing plates and box-die molds, do not become part of the finished product, and the sale of these items to the user is subject to tax. 9/28/55.

440.0300 **Mold for Castings.** A foundry receives an order for a mold and for castings to be produced from the mold, certifying that both items are for resale. After making the mold, a sample casting is poured as proof to the customer that the mold is satisfactory. Foundry then invoices the customer for the mold and thereafter uses the mold to produce the castings.

The sale of the mold to the customer is a taxable sale and not a sale for resale as the customer uses the mold prior to any resale thereof by permitting the foundry to use the mold to produce castings.

The customer’s resale certificate is applicable only to the castings. 8/24/55.

440.0340 **Molds and Dies—Title.** In the instance of molds and dies used in the manufacture of oil seals it has been ruled that even though a purchase order and invoice are exchanged, which typically form part of the sales contract, no sale has taken place if the tooling only is used in the production of the product and not turned over to the customer at the end of the run. In this case the invoice is only a pricing arrangement and not evidence of sale. Thus, the only sale is the sale of the oil seals. If that sale is in interstate commerce, the manufacturer’s charge is exempt from sales tax. If the title provision for the tooling appears on the purchase order or invoice, then the manufacturer sells the tooling. If title passes before the manufacturer’s use, sales tax applies to the sale. If title passes after the manufacturer’s use, the manufacturer may not purchase the tooling for resale, but the sale by the manufacturer will be an exempt sale in interstate commerce if it meets the specific requirements of the exemption. 5/27/64; 11/21/89.

440.0360 **Wax models** sold to a manufacturer for use in making metal casts are manufacturing aids and subject to sales tax. 2/16/54.

(4) PAPER PRODUCTS; EXPLOSIVES—CHEMICALS USED IN MANUFACTURE OF

440.0380 **Explosives.** “A” purchases concentrated sulphuric acid from “B,” a California supplier, ex-tax and makes the following uses thereof:

(1) Mixes the acid with other acid and sells the mixture to its customers, “C” and “D,” who use it as a dehydrating agent.

(2) Uses the acid in its own manufacture of nitroglycerine, or other processes, as a dehydrating agent.

(3) After use of acid in (2) above, “A” sells the diluted acid back to “B” for reconcentration and resale to the trade, or

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(4) Uses diluted acid in manufacturing fertilizer, or

(5) Reconcentrates the acid and again uses it as in (2). No taxable use is made of the acid in (1), it being incorporated into a product being resold, but the sales to "C" and "D" are not sales for resale.

The use in (2) as a dehydrating agent is a taxable use even though the acid may be later resold.

The sale back to "B" in (3) is an exempt sale for resale.

Where "C" and "D" sell diluted acid back to "A" who resells it directly to "B" the sale to "A" is exempt.

Where "C" and "D" sell diluted acid back to "A" for use as in (4), the use is exempt since the acid is added solely for the purpose of adding sulphate ions as a component part of the fertilizer (ammonium sulphate) to be manufactured and sold. But if "A's" use is as in (5), it is a taxable use. 3/3/53.

440.0395 Newsprint Manufacture. Sodium tripoly phosphate and sodium hydrosulfite (V-Brite) impart beneficial qualities to finished newsprint by their presence in the finished product. Accordingly, they may be purchased for resale by manufacturers of newsprint.

Sulfur dioxide, liquid sodium bisulfate and sodium borohydride are purchased primarily for use in the process of manufacturing newsprint. Although some amount of these chemicals may incidentally remain in the final product, they are not purchased for resale as part of the finished product. 8/7/86.

440.0400 Paper Products. The following chemicals and compounds are taxable manufacturing aids:

(1) Busan 90—a bromohydroxy acetophenone product which is injected into wood pulp slurries, processing water and paper coatings to prevent the growth of bacteria and formation of slime in pulp and on finished paper.

(2) Sodium Hydroxide (Caustic Soda), Calcium Carbonate (Limestone) and Sodium Sulphate—used to charge an alkaline cooking liquor which digests wood chips, leaving cellulose pulp.

(3) Chlorine and Sodium Hydroxide—combined to make Sodium Hypochlorite which is used to bleach kraft pulp.

(4) Chlorine—used in multi-stage bleaching of kraft pulp; combines with lignin, rendering it reactive for subsequent bleaching operations.

(5) Sodium Silicate, Magnesium Sulphate, Trisodium Phosphate and Versenek 80 (Diethylenetriamine—Penta-Acetic Acid)—combined to make a bleaching solution for ground wood pulp. These chemicals act as stabilizers, preventing premature disassociation by pulp impurities.

(6) Sodium Hydroxide—used in caustic-extraction stage of kraft bleaching operations; serves in removal of water-soluble chlorinated lignin material.

(7) Sulphuric Acid, Sodium Chlorate and Sulphur Dioxide—combined to make a chlorine dioxide compound used for bleaching kraft pulp.

(8) Vanzak 112—liquid used as dispersant for pitch in kraft and ground wood pulps. Most of it is eventually washed out of the pulp.

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(9) Defoamers (NOPCO DF-120, DF-160 and DF-303)—detergent compounds which are used to inhibit foaming in the process of manufacturing paper. They also serve as aids in the retention of fine pulp particles. The major portion of such defoamers is flushed away with other process effluents.

The following chemicals and compounds, or their constituents, become components of pulp and finished paper products, and thus may be purchased ex-tax for resale by a paper manufacturer.

(1) Mistron Talc—a Magnesium Silicate compound, which is added to wood pulp to control deposition of pitch and remains as a desirable component of finished paper.

(2) Ammonium Hydroxide—used as a mineral dispersant; becomes a component of the waterproof surface coating of finished paper.

(3) Sodium Hydroxide and Sulphur Dioxide—used to control reaction rates in peroxide bleaching of ground wood pulp. No washing of the pulp is done after introduction of these compounds and Sodium and Sulphur therefrom remain in the pulp and finished paper products. 3/10/65.

(5) TEXTILES—CHEMICALS USED IN DYEING OF

See also Fur Dressers and Dyers.

440.0415 Chemical Consumed in Fabric Dyeing. The following chemicals are consumed during the fabric dyeing process and do not become incorporated in the finished product.

Sodium Silicate is used as a stabilizer and does not become a component part of the finished product.

Caustic Soda (sodium hydroxide) is used to aid in the bleaching process. Bleaches used in bleaching material are consumed.

Sodium Perborate is used mainly for bleaching.

Hydrogen Peroxide. Its major use is to bleach the material and does not remain in the finished product to make the cotton stronger or more resilient. 4/29/80.

440.0425 Chemkar 211F. Chemkar 211F is used as a manufacturing aid in the dyeing of polyester carpet, and its sale is taxable. 8/30/74

440.0430 Cleaning Agents Purchased by Textile Processors. The purchase by textile processors of water softeners, wetting agents, stripping agents, bleaching agents, and detergents are purchased for some purpose other than resale. The mere fact that some portion of the products purchased may remain in the finished product is immaterial. (*American Distilling Company v. State Board of Equalization*, 55 Cal.App.2d 799). 4/1/53.

440.0440 Dyeing of Cloth. In the dyeing of cloth, the chemicals Emulphor, Katanol, Orthodichlorobenzene and Triton 770 Concentrate are used primarily as solvents and emulsifiers and do not become a part of the dyed cloth. Therefore, the sale of such items to dyers is taxable. 5/31/57.

PROPERTY USED, ETC. (Contd.)

440.0460 **Wetting Agents.** The sale of wetting agents to textile dyers for use in enabling the fabric to absorb more of the dye, is a manufacturing aid which does not become a component part of either the fabric or the dye, and is taxable as a retail sale. 5/29/53.

(6) FOOD AND BEVERAGE PROCESSING

Bakery and pan oils, see also Food Products.

440.0480 **Aluminum Foil Potato Wrap.** Aluminum foil "potato wrap" is sold to restaurants and used as a wrap in which potatoes, with foil intact, are served with meals. If the foil is purchased primarily for use as a wrapper for baking potatoes and not for use as a container for serving baked potatoes, sales of aluminum foil to restaurants for such purposes are taxable retail sales. If the foil is purchased specifically for use as a container for serving baked potatoes, the foil may be purchased for resale.

The use of aluminum foil as a container for serving baked potatoes would be where the foil is used to cover discolored or unsightly potatoes or in some instances, to cover boiling potatoes which are substituted for baking potatoes. 11/3/78.

440.0484 **Aluminum Sulfate—Processing Sugar Pulp.** Aluminum sulfate used in processing sugar pulp and molasses is a manufacturing aid even though some of it remains in the final product. The amount of aluminum sulfate in the final product is an incidental result of the manufacturing process. Therefore, sales of aluminum sulfate to sugar manufacturers are subject to tax. 12/11/91.

440.0500 **Charred Oak Barrels** purchased by distillers of whiskey and used in the aging of whiskey, not only impart certain chemical compounds but are used to store the whiskey and to aid in certain chemical reactions the end result of which produces a matured beverage. This being the primary use of the barrels they are, accordingly, manufacturing aids the sale of which is subject to sales tax. 6/7/54.

440.0520 **CO₂ Gas** for use in the sale of draft beer is taxable, since the purchaser buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas. 8/7/52.

440.0521 **CO₂ Gas.** Purchases of CO₂ Gas used as a freezing agent in preparing frozen strawberries are taxable since the gas is not purchased for the purpose of becoming an ingredient or component part of the product even though some portion of the gas may remain with the packaged frozen strawberries. Similarly, the CO₂ cannot be considered as nonreturnable packaging material since it does not prevent physical damage nor contain the strawberries during shipment. 10/6/93.

440.0522 **CO₂ Gas.** CO₂ gas is used to freeze chicken cubes to prevent them from sticking together when packed. The CO₂ does not become a component part of the article sold, but is instead an item used in the processing of the property. As such, the CO₂ is subject to sales tax. 2/19/82.

PROPERTY USED, ETC. (Contd.)

440.0523 **CO₂ Gas.** CO₂ gas is purchased for use in lowering the pH level of olives during the manufacturing process. The CO₂ gas neutralizes a solution of sodium hydroxide leaving salt in the olives as a result. No CO₂ remains in the olives after the processing. Since the CO₂ is not purchased for the purpose of becoming an ingredient or component part of the finished olives, the CO₂ falls into the category of a manufacturing aid and purchases of the gas for this purpose are subject to tax. 11/29/00. (2001-2).

440.0540 **Corn Starch.** Molding starch, composed principally of corn starch and used in the manufacture of candy, does not become an ingredient of the candy and is a manufacturing aid subject to tax. 7/26/55.

440.0550 **Fruit Processing—Calcium Hydroxide and Calcium Chloride.** These chemicals are purchased for the purpose of providing calcium which unites with the pectic acid in fruit to form calcium pectate, which “sets” or “firms” the fruit. One half remains with the fruit with the remainder being discarded with the brine. The primary purpose of the calcium hydroxide and calcium chloride is to form calcium pectate. Accordingly, it may be purchased for resale. 7/30/42.

440.0560 **Ice, Used in Manufacturing Luncheon Meat.** If the ice is used for any purpose other than to become an ingredient or component part of the finished product it is purchased for a purpose other than resale and that the tax accordingly is applicable. 9/4/51.

440.0580 **Nitrogen.** Nitrogen, in gaseous form, used in the manufacture of salad dressing is primarily used to prevent spoilage before, during and after the manufacturing process, is a manufacturing aid subject to tax. Where a small amount of such gas is placed in the neck of the bottles just before capping, a resale occurs which portion would be exempt. 5/8/56.

440.0600 **“Pectinol.”** “Pectinol” used in a manufacturing process involving fruit juices is a manufacturing aid consumed in such manufacturing process, and is subject to tax. 10/30/56.

440.0620 **Petroleum Sulfonates.** Petroleum sulfonates used to hydrolyze fats are used as a manufacturing aid and their sale is subject to tax. 10/25/55.

440.0626 **Potato Sprout Inhibitors.** Isopropyl-M-Chlorocabanilate, also known as choropropham or CIPC, is applied to potatoes after they have been harvested to prohibit sprouting while in storage.

If the chemical is used during storage to prevent potatoes from sprouting, with the inhibition of sprouting to continue after the treatment even though the CIPC is physically removed after treatment, the CIPC cannot be purchased for resale and sales tax would apply to the sale of the chemical. The chemical in this situation would be considered used as a catalyst or to produce a chemical or physical reaction. (*Kaiser Steel Corp. v. State Board of Equalization* (1979) 24 Cal.3d 188).

PROPERTY USED, ETC. (Contd.)

On the other hand, if the CIPC must be physically present on the potatoes at the time of sale in order to continue inhibiting sprout growth and if this is the grower's reason for applying the chemical, then the growers may issue a resale certificate to their vendors. 7/19/95.

440.0630 **“Produce Wash.”** “Produce Wash” is applied to produce and then completely rinsed off with water so as to facilitate removal of the dirt and chemicals on the produce. It is not incorporated into the produce and its sale to grocery stores or food processors is a taxable retail sale. 5/30/90.

440.0640 **Salt and Lye.** Salt used for preserving olives before processing and lye used in processing olives are taxable. The final salt brine is exempt if it remains with the olives when they are sold. 1/9/55.

440.0660 **Salt Used for Cooling Fruit.** Salt used in cooling fruit during shipment in interstate commerce may not be purchased under a resale certificate as ice may in similar circumstances, since the exemption afforded ice used in shipping or packing is statutory. 7/3/62.

440.0680 **Salt Used in Grading Vegetables.** Salt used in the business of grading peas and beans for food processing and packing is a manufacturing aid and subject to tax. 3/16/55.

440.0700 **Soda Ash, Borax, Fungicides.** All of these products are used by packing companies in the preparation of fruits and vegetables for sale:

Soda ash or borax which is sold to fruit packing companies is not purchased for the purpose of physically incorporating them into the manufactured article to be sold. Soda ash is added at the packing house to act as a cleansing agent which cleanses the fruit of impurities found on the fruit at the packing house, not being added for the purpose of incorporation.

Borax is used primarily as a fungicide to destroy fungus spores which have accumulated on the fruit prior to its arrival at the packing house. While some borax remains on the fruit to protect it after its departure from the packing house, most of the borax performs the function of removing existing spores and during the process goes off into a bath rather than permanently becoming a part of the fruit . . . The sale of borax to the packing house constitutes a taxable retail sale. 9/26/52.

440.0710 **Sprout—Nip A and Sprout Nip Emulsifiable Concentrate.** These products are herbicides which prevent sprouting of potatoes and do not become incorporated into the potatoes. Therefore, the sales of these products to growers and dealers, who apply it to the potatoes, are taxable. 9/20/93.

440.0720 **Sulphur** used in drying and curing fruit is regarded as used by manufacturer, not as incorporated and resold. 9/13/51.

440.0735 **Transfer Paper.** Transfer paper is used in the textile manufacturing process. According to the taxpayer, it is paper which is treated with a special chemical. According to the supplier of the transfer paper, the chemical's role is

PROPERTY USED, ETC. (Contd.)

purely that of a catalyst. The taxpayer maintains that the chemical adds a sheen to the fabric and it also helps prevent snagging of certain sheer polyester.

Mere physical presence in a finished product is an insufficient basis for exemption. The available evidence is that the primary purpose of the transfer paper is as a manufacturing aid to facilitate the transfer of a design from a silk screen to the fabric. After the process is completed the paper is discarded. There is no evidence that the chemical contained in the paper is in the fabric or the paper which is discarded. Even if some of the chemical appears in the fabric, it appears that it is incidental and the transfer paper is a necessary element in the heat transfer process. 4/30/90.

440.0760 Wax. The sale of wax used to preserve olives while fermenting is taxable. 9/13/50.

440.0770 Wine Making, Chemicals Used in. The following percentages have been established as standard reporting figures for the amount of the specified chemicals which are incorporated into the finished wine and are resold. The remaining percentage is taxable as a manufacturing aid.

liquefied sulfur dioxide gas	55 percent	
potassium meta-bisulfite	35 percent	
sodium meta-bisulfite	35 percent	4/15/71.

440.0775 Wood Used In Curing Meats. The primary purpose for burning wood in the processing and curing meats is to produce smoke which becomes a component part of the meat product to be sold. The wood may be purchased for resale. 7/24/40.

440.0780 Yeast Used in Wine. Since yeast is used in the manufacture of wine in order to bring about the fermentation process and is not used for the purpose of physically incorporating it into the wine, the sale to manufacturers is taxable notwithstanding that during the fermentation process some yeast cells do in fact become part of the wine through disintegration, this being only an incidental factor in the production of wine. 5/2/61.

(7) MISCELLANEOUS SPECIFIC AIDS

Coke, carbon, etc., used by Foundries, see also Foundries.

440.0798 Abrasive Pads—Ophthalmic. Abrasive pads used to grind lenses are consumed by the ophthalmic lens laboratory. Since the laboratory is the consumer, tax applies to the sale of the pads to it. 2/18/92.

440.0800 Activated Charcoal Used in Rectifying Grain Alcohol. Activated charcoal, sold to rectifiers for purifying grain alcohol, is used to absorb impurities from the alcohol and is then discarded. Activated charcoal used for such purpose is a manufacturing aid. Accordingly, the sale to the rectifier is subject to sales tax. 4/4/66.

440.0820 Activating Solution Used in Shoe Manufacturing which completely evaporates in process, tax applies on sale to shoe manufacturer. 4/16/51.

PROPERTY USED, ETC. (Contd.)

440.0840 **Aluminum.** Where aluminum is sold for the purpose of removing oxygen from the molten steel and the greater part thereof is skimmed from the top of the ladle as slag, it is not sold for resale and sales tax applies. 12/29/54.

440.0860 **Aluminum—Used in Steel Manufacture.** Aluminum purchased by manufacturers of steel is placed in ladles and covered with molten steel, preventing the formation of pinholes in the finished steel. The aluminum oxide is skimmed off the surface of the molten steel. The aluminum is purchased for use as a manufacturing aid and not for the purpose of resale. Accordingly, it is subject to sales or use tax notwithstanding the fact that a portion of the aluminum remains in the finished steel. 8/9/65.

440.0866 **Ammonia, Sulfuric Acid and Caustic Soda Used to Manufacture Cracking Catalysts for the Petroleum Industry.** Ammonia, sulfuric acid and caustic soda are used in the manufacture of cracking catalysts which are sold to the petroleum industry. Only two percent of the ammonia and sulfuric acid remain in the finished catalyst, but their presence is necessary for the catalyst to be effective. These chemicals may be purchased for resale even though ninety-eight percent is washed out or dumped during the manufacturing process. The caustic soda detracts from the stability and activity of the catalyst. The caustic soda is therefore regarded as a manufacturing aid even though some portion remains in the catalyst. 9/6/77.

440.0880 **Ansol PR Used to Achieve an Adhesive Seal.** Sales of Ansol PR are taxable when made to a company which purchases it for the purpose of achieving an adhesive seal on a cellophane overwrap around a box rather than for incorporation into the cellophane wrap. Due to the evaporation of the chemical during the process, it is consumed rather than resold. 4/12/62.

440.0887 **Artwork for Silk Screening.** A taxpayer sold custom T-shirts and other printed items. The taxpayer created the art to the customer's specifications or found a suitable piece in his archives. He retained title to the artwork, but made a separate charge for camera work and the silk screens. The charge for the camera work and silk screens is a part of the gross receipts which are subject to tax. Gross receipts include the total amount of the sale price without deduction on account of labor or service cost. It is immaterial that the taxpayer separately stated his labor charges. 2/22/94.

440.0900 **Bleaches** used in bleaching materials, regarded as consumed and not incorporated and resold. 7/2/51.

440.0920 **Bleaches.** Caustic soda, soda ash, liquid chlorine, sulphuric acid, oxalic acid and other similar chemicals used as bleaching agents in the manufacture of shellac are considered as consumed manufacturing aids and the tax is applicable. 12/22/52.

440.0940 **Blowing Agents and Catalysts** which alter the cell structure of components used in the manufacture of flexible polyurethane foam and dissipate substantially in the process are used primarily as manufacturing aids to produce

PROPERTY USED, ETC. (Contd.)

a chemical reaction, rather than as components of the finished product and sold with it and so are subject to sales tax. 5/27/69.

440.0950 Celluloid Tapes and Reels as Containers. In manufacturing printed circuit boards, integrated circuits and other components placed on the board are placed between two layers of celluloid tape and wound around a reel. The placement machinery then separates the two layers of celluloid tape and places the components on the board at the desired location. The celluloid tapes are discarded. The reels may be recycled or scrapped.

When the entire package of the celluloid tapes and reels are purchased together with the components from the supplier of the components in a completed form, the celluloid tapes and reels are containers and the package may be purchased by the manufacturer of the circuit boards for resale. However, when the components are purchased from one supplier and the manufacturer separately purchases the celluloid tapes and reels, the manufacturer is the consumer of the tapes and reels and may not purchase them for resale. Further, if the insertion of the components into the celluloid tape and the mounting of the reels is sub-contracted to a third party, the charges represent fabrication of a manufacturing aid and as such are subject to tax.

If the manufacturer retains title to the tapes and reels, a separate charge for mounting the integrated circuits on the reels and tapes to their customers is not taxable if the circuit boards are sold for resale. If the circuit boards are sold at retail, such charges are includible in the taxable gross receipts. (8/30/93).

440.0960 Chaplets. Chaplets, a metal device used in foundries for holding a core or section of a mold in place, are used as manufacturing aids and are, accordingly, purchased for use rather than for resale and sales thereof to manufacturers are subject to sales tax. 12/14/54.

440.0980 Chaplets and Cleaners, Nails. The following have been held to be consumed by the manufacturer rather than resold as an ingredient or component part of the manufactured article: Chaplets used to support core proper distance from mold, nails inserted in casting to regulate rate of cooling, cleansers used to prepare surfaces to be painted. 3/24/50, 4/20/50, 4/21/50.

440.0988 Chemicals Used in Conversion Coatings for Steel. Conversion coatings are coatings formed on metals by treatment with suitable combinations of acids and metallic salts in dilute solutions. The coating is the result of converting the exterior metallic molecules into another chemical compound with different physical and chemical properties. Tax applies as follows to chemicals used in the process.

Leeder 374-H—Leeder 374-H is a cleaner and iron phosphating compound and is used at about 1½ ounce per gallon of water at 140°–160° F. Under these conditions, the phosphate portion which is about 80% of the formula reacts with the outer layer of iron, forming a complex iron phosphate. This coating imparts a color, increases paint adhesion and increases corrosion resistance. Leeder 374-H may be purchased for resale since its primary purpose is to form a

PROPERTY USED, ETC. (Contd.)

nonmetallic coating on the metal being treated through a chemical conversion of the surface metal, notwithstanding that it may to some extent perform a cleaning function prior to the actual disposition of the coating on the metal.

Leeder 272-H—Leeder 272-H is used with Leeder 374-H to control the pH in the proper range to get good disposition and improved corrosion resistance. Therefore, it is in the nature of a catalyst. It is used for purposes other than incorporation into the finished product. Under such circumstances, Leeder 272-H is regarded as a taxable manufacturing aid.

Leeder 771-H—Leeder 771-H is used in the final rinse stage to “stabilize and seal” the phosphate coating by depositing in the capillaries of the coatings itself. Since Leeder 771-H is being incorporated into the finished product, it may be purchased for resale. 5/10/71.

440.1000 Cleaners, purchased for use in preparing metal parts surfaces prior to rust-proofing, do not become incorporated in product; tax therefore applies to sale of cleaner to user. 4/25/51.

440.1015 Coal (Fly Ash) Used in Manufacturing of Cement. In one of the stages in the manufacturing of cement, coal is crushed into powder, blown into the kiln and ignited. The coal is used to produce heat in the kiln. Most of the coal is consumed or evaporates in the process but the inorganic elements, primarily silica, alumina and ferric oxide, remain in the form of ash called “fly ash.” Approximately 98 percent of the fly ash is absorbed by and remains in the clinker (a lava-like substance which is mixed with gypsum to form the cement), while the remainder escapes in the kiln mixed with the various gasses. About 10 percent of the coal, measured by weight, is composed of the fly ash elements that remain in the cement. The fly ash in the amount that remains is a necessary and desired element of the finished cement.

Under this process, there is a dual purpose for purchasing coal, namely, the organic elements to provide heat while the inorganic elements or fly ash to be incorporated into the finished product. Therefore, the portion of the coal (fly ash) that is incorporated into the final product is not subject to tax.

Since the coal is purchased for a lump-sum price, the price must be allocated between the fly ash and the other elements of the coal. The amount of fly ash incorporated into the final product is derived from 10 percent of the coal. However, since fly ash normally sells for about one half the price of coal, the nontaxable portion should be computed based upon the fair market value of the amount of fly ash obtained from 10 percent of the coal purchased. 9/13/72.

440.1020 Coke used for melting minerals which are then converted to wool insulation fibers in the manufacture of rock wool, does not become an ingredient of the finished product and hence is taxable as a manufacturing aid. 10/8/54.

440.1040 Crude Oil. Ethylene oxide, propylene oxide and propylene sulfonate used in manufacturing demulsifying agents which are used for removing water from crude oil are taxable as manufacturing aids, even though they may incidentally become physically incorporated into the crude oil. 4/7/67.

PROPERTY USED, ETC. (Contd.)

- 440.1045 **Crude Oil—Chemical E-4161.** Chemical E-4161 is added to crude oil where it functions as an emulsion breaker, i.e., it facilitates the separation of crude oil from contaminated water or brine. Even though it remains with the crude oil component when the water is removed, its purpose is to remove the water. Therefore, it is a manufacturing aid and may not be purchased for resale. 11/24/92.
- 440.1050. **Cyclohexanone.** The chemical Cyclohexanone utilized as a solvent and dispersal agent in the manufacture of magnetic tape is a taxable manufacturing aid notwithstanding that each repeated use of the chemical may result in the incorporation of about one percent of the property. 7/11/74.
- 440.1055 **Degreasing Agents.** Remkleen WS and Metro CD are degreasing agents used by various persons prior to painting, welding, etc. These agents are not incorporated into the product for resale, and are subject to tax. 5/19/72.
- 440.1060 **Deobase.** The chemical “Deobase” is a manufacturing aid used in process of making soap and its sale to the manufacturer is taxable as a sale for a purpose other than resale. 2/15/57.
- 440.1080 **Electroplating.** Nickel Sulphate, Nickel Chloride, Coppralylte, Potassium Stannite, and Silver Cyanide used in electroplating, the metallic components of which become incorporated in finished products which are sold, may be purchased ex-tax for resale.
- Boric Acid, Caustic Potash, Potassium Carbonate, and Potassium Cyanide, used in electroplating, the components of which do not become incorporated in finished products which are sold are taxable manufacturing aids. 9/14/66.
- 440.1085 **Electroplating.** Sales to platers of brightners to be codeposited or absorbed into a product which is resold are sales for resale and not subject to sales tax. Likewise, if a plater plates a new article for a consumer, his entire charge is taxable and sales to him of brightners are for resale. However, when the plating is of a used article for a consumer, the plater is the consumer of the brightners and sales thereof to him are taxable. 6/2/72.
- 440.1090 **Emulsion Breakers.** Emulsion breakers separate oil and water in crude oil. They are regarded as being used in a manufacturing process. Tax applies even though they may incidentally dissolve in the crude oil and some portion may remain in the finished product. 11/20/89.
- 440.1095 **Film and Negatives Used to Produce Sample Prints.** Raw film and optical sound track negatives were used in the process of duplicating previously released motion pictures from which sample prints were made. The sample prints and the negatives used to produce them were then sold. In this case, the negatives were used as manufacturing aids to make the sample prints prior to being sold. Therefore, use tax applies to the cost of the raw film stock and the optical sound track used to make the sample prints, as set forth in Regulation 1525.1, in addition to the sales tax due upon their sale to the purchaser. 8/28/91.

PROPERTY USED, ETC. (Contd.)

440.1105 **Flourspar.** Flourspar (calcium fluoride) is added to raw cement mixes during manufacturing to facilitate clinkering. It lowers the temperature at which liquid is formed and thus reduces the clinkering temperature; however, its presence has no beneficial effect on the cement. Flourspar is a manufacturing aid and its sale to a cement manufacturer is a taxable retail sale. 3/13/81.

440.1120 **Flux.** Flux may be used as a cleaning agent or as a means of reducing oxidation; it may also be used for transmitting desirable alloys to the deposited metal. To the extent it is used for the latter purpose it will not be subject to sales tax. Since the different functions are not mutually exclusive exempt and non-exempt purposes may be served simultaneously and in such cases the tax will have to be apportioned between the various uses. 6/15/61.

440.1121 **Flux.** Flux used to prevent magnesium from burning during the process of melting magnesium is not purchased for purpose of resale. The sale of the flux is subject to tax. 11/4/42.

440.1140 **Flux, Lead and Wire-Drawing Compounds as Manufacturing Aids.** Flux used in coating a base metal with another molten metal reduces the oxidized surface of the base metal, permitting the bonding of both metals. Neither the flux nor its constituents becomes incorporated in the bonded metals to any significant degree.

Molten lead is used as a bath for preheating wire prior to passage through flux and immersion in molten zinc. A small amount of lead adheres to the wire and becomes incorporated in the galvanized coating.

Calcium stearate and grease compounds containing hydrated lime and borax are used as lubricants to facilitate the drawing of wire through dies and to produce various finishes. Pressures developed in drawing cause a certain amount of the drawing compounds to adhere permanently to the wire surfaces.

Such fluxes, lead and wire-drawing compounds are purchased for use in performing manufacturing operations and not for the purpose of incorporating their constituents in finished wire products. Accordingly, sales of such property to a wire manufacturer for such purposes are not sales for resale. 12/29/65.

440.1160 **Fuel Oil.** Fuel oil sold for the purpose of generating steam in a manufacturing plant to assist in the process of curing products is subject to sales tax. 1/27/53.

440.1180 **Fusel Oil.** Fusel oil purchased for use as an anti-foam agent in the pumping over and recirculation of a finished coating solution are used as a manufacturing aid and hence consumed by the user. 5/26/54.

440.1200 **Galvanizing Process, Chemicals Used in.** Caustic soda, sulphuric acid, and hydrochloric acid (sometimes called muriatic acid), and zinc ammonium chloride are manufacturing aids consumed by the manufacturers in the galvanizing process. 1/13/70. (Am. 2000-1).

440.1220 **Garnet Paper.** Garnet paper purchased and used to smooth the surface of plywood is consumed during the manufacturing process and is not purchased

PROPERTY USED, ETC. (Contd.)

for resale notwithstanding the fact that the resins from the garnet paper remain on the surface of the finished product since this is only an incidental effect. 4/7/61.

440.1230 Gypsum. Gypsum added in the process of manufacturing glass containers is an essential component of the manufactured article and may be purchased for resale. 11/11/76.

440.1234 Gypsum for Wallboards. The following chemicals used in the production of gypsum for wallboards are manufacturing aids:

(1) **Lignosite (lignosis).** Since gypsum is a dehydrate of calcium sulfate and water, it is important that two and only two molecules of water bond to each molecule of calcium sulfate. Lignosite is a diffusing agent which is added to the slurry of calcium sulfate and water to ensure that the water will spread evenly throughout the mixture. When added to the slurry, the lignosite bonds with water molecules to form ionized water-lignin molecules. The ionized molecules apparently surround the calcium sulfate particles and thereby impart a negative charge to each of the particles. The result is that each particle repels every other particle ensuring adequate diffusion of the water and proper bonding to the calcium sulfate.

Lignosite is used as a diffusing agent, and the fact that it remains in the finished product is merely an added benefit. Accordingly, the purchases of lignosite is for the primary purpose of use during the manufacturing process and not for the primary purpose of resale as part of the finished product. Also, the use of the lignosite as a diffusing agent in the manufacturing process is prior to resale.

(2) **Retarders and Potassium Sulfate.** In the wallboard's drying process, it is important that all parts of the gypsum dry at the same rate. If some parts dry prematurely, the result is stress lines in the gypsum which weaken the wallboard. In order to control the rate of drying, "retarders" and potassium sulfate are added to the gypsum. The retarders are added first and their function is to prevent the gypsum from drying so that no part dries prematurely. At the proper time, potassium sulfate is added. This chemical causes the gypsum to dry almost immediately, thereby producing a uniform "snap set."

Both the retarders and potassium sulfate are used to produce chemical or physical reactions during the manufacturing process. The retarders are used to delay drying and the potassium sulfate is used to produce a snap set. Although the retarders and potassium sulfate remain in the finished gypsum, their physical presence does not appear to have any beneficial effect whatsoever. Accordingly, these chemicals are purchased primarily for use in the manufacturing process and not for resale. Also, the use of these chemicals in the manufacturing process is prior to resale. 6/28/83.

440.1237 Hormone Rooting Powder and Liquid. Sales tax applies to the sales of rooting powders and liquids. Rooting hormones are described as follows: "They are placed on the tip end of the cutting. Upon watering and with the proper temperature and other greenhouse or growing practices, rooting hopefully occurs.

PROPERTY USED, ETC. (Contd.)

After rooting, the stock is either placed in containers or sold as rooted cuttings for others to grow to proper size for resale . . . The hormones are used in the production of the finished product.”

Indole 3 butyric acid and naphthalenaecetic acid, the active ingredient of the rooting powder and liquid, are growth regulators used by the growers to promote the rooting of plants. The primary purpose of such growth regulators is to promote the rooting of the plants. Only after this rooting function is performed and the rooting has occurred are the rooted plants resold by the growers.

The resold plant having been rooted by the use of rooting products is not sufficient to conclude that the growers are reselling the rooting product. Further research leads to the conclusion that during the rooting process, the growth regulators are metabolized into the cells of the plants or are exhausted and detoxified by indiscriminate reactions that are meaningless to cell regulation. It is also concluded that the growers purchase the rooting products for the purpose of rooting the plants before they are sold. A small amount of unexhausted and toxic rooting powder or liquid still being active in the rooted plant would be incidental to the growers purpose and would not change the conclusion. The courts have held that the sale of chemicals for use in a manufacturing process is a taxable retail sale where only a small and uncertain portion of the elements of the chemicals are retained in the finished product. (*American Distilling Company v. State Board of Equalization*, 55 Cal.App.2d 799, 804). 11/17/71.

440.1240 **Hydrochloric Acid.** Where HCl is purchased, used first to extract a product, and then used in the manufacture of cattle feed, it cannot be purchased ex-tax for resale. 4/28/64.

440.1260 **Hydrochloric Acid—First Taxable Use.** The sale of HCl for use in the manufacture of monosodium glutamate is a retail sale and subject to tax, even though subsequent to such use it is incorporated into cattle feed which is sold. 9/14/64.

440.1280 **Hydrogen, Oxygen, and Butane Gases,** sales of, to manufacturer, used in fusing glass in manufacturing “nitrogen filled” thermometers, are taxable retail sales. Sales of nitrogen, however, to be used as ingredient are exempt. 8/1/51.

440.1300 **Iron Rods and Bars.** Are not bought for the purpose of resale even though the iron remains in the finished product, where such bars and rods are used as electric poles to create an electric spark.

This is equally true in the case of pipes used to convey oxygen prior to their becoming an ingredient of the finished product.

An apportionment is not possible in either of the above situations because all of the material is used for a purpose other than resale, even though it ultimately is resold. 2/21/55.

440.1320 **Kerosene.** The use of kerosene as a heating agent in processing products is subject to tax as it is substantially consumed in the process, thus becoming a manufacturing aid. 3/2/56.

PROPERTY USED, ETC. (Contd.)

440.1330 **Lignin and Potash.** Both of these chemicals are used in the manufacturing of wallboard. Lignin retards setting and also assists in the penetration of the slurry into the paper. Potash accelerates the final setting of the gypsum.

Since these properties enhance the manufacturing process so that a higher quality wallboard can be produced, they are manufacturing aids and their use is subject to tax. 4/13/93.

440.1340 **Lubricants.** A rubber chemical used as a lubricant to facilitate mold release of rubber products such as tires, and which may remain as a film on the finished rubber product, is nevertheless a manufacturing aid purchased primarily for use as a lubricant, and is subject to tax. 3/4/54.

440.1360 **Lubricants.** Zinc stearate and wax, purchased by a ceramics manufacturer for use as external lubricants in the manufacture of articles produced by molding, improve the flow of the material being molded and facilitate the removal of the article from the mold. Zinc stearate and wax purchased for such purpose are purchased for use as manufacturing aids. Sales of such materials to a ceramics manufacturer for such use are taxable retail sales. 8/13/64.

440.1380 **Lumber Treatment.** Purchase of Melsan, Lignasan, Wyandotte Noxtane and Permattox, used as an anti-blue stain for lumber are sales for resale, provided, the purchaser who applies such stains does not plane the lumber subsequent to such application and sells the lumber unplanned. If, however, the applier planes the lumber after application of the stain and before sale of the lumber, the stain is thus removed and the sale of the stains to the applier is taxable. 7/18/56.

440.1420 **Offset Prevention.** The sale of a powder to printers for use as a spray to prevent wet ink from offsetting, is a retail sale and subject to tax. 2/18/54.

440.1440 **Oil for Flushing Wells.** A sale of oil for flushing oil wells is not a sale for resale. Although the flushing oil used to clean the walls of wells commingles with the petroleum which is pumped from the well and sold, the flushing oil performs its function before it commingles with the product to be sold. 7/31/58. (Am. 2000-3).

440.1460 **Paper Pulp.** The sale of paper pulp and wood fiber which is ultimately incorporated into a product sold as cattle feed is, nevertheless, a retail sale when prior to incorporating it in cattle feed it is used in a filtration process. 3/25/65.

440.1470 **Peptide and Antibody Manufacture.** A taxpayer manufactures peptides by solid phase synthesis. A catalyst is used to couple the various amino acids into peptide chains. The peptides are washed with mixtures of solvents such as methylene chloride and methanol. The peptides are then purified, freeze dried, and packaged for sale. The taxpayer also produces antibodies to peptides by injecting rabbits, guinea pigs, and rats with peptides. Blood is withdrawn from the animals and the antibodies are isolated, purified, and sold.

PROPERTY USED, ETC. (Contd.)

Even if some portion of the catalysts, solvents, and carriers remain in the finished products, there is no indication that such presence has any beneficial effect on the final product. These items are manufacturing aids and may not be purchased for resale. 5/4/94.

440.1480 **Peroxides.** Peroxides used as initiators in the production of plastic products become a component part of the finished product and accordingly, may be purchased ex-tax for resale. Cellophane, on the other hand, used in such production, constitutes manufacturing aid and is subject to tax. 11/16/56.

440.1485 **Petroleum Coke.** By use of the word “waste”, the Legislature did not intend to exempt “moderate to high value byproducts”. It has been noted that the quality of petroleum coke can vary significantly from refinery to refinery. Much of the sulfur originally contained in crude oil and almost all of the metals are concentrated in the petroleum coke. The higher the level of sulfur and metals, the less the value of the petroleum coke. Assuming that petroleum coke is not a “moderate to high value byproduct”, the sale is exempt from tax regardless that it has some commercial value. 1/7/92.

440.1500 **Phosphoric and Sulphuric Acids.** These acids, used in a process known as “anodizing” aluminum, are primarily used as electrolytes, acting in the nature of a catalyst, and do not become a component part of the aluminum objects that are processed. The processor is accordingly the consumer of such acids and subject to tax thereon. 4/24/57.

440.1520 **Plastic Coatings** sold to manufacturers which become a part of the finished product are exempt sales for resale. Where reducers in separate containers are sold along with such plastic coatings and used by manufacturers to reduce the coatings to proper consistency, they are manufacturing aids the sale of which is subject to tax. If a single price is charged for both items, it will be necessary to allocate to the reducer its fair retail selling price upon which tax must be paid. 3/12/54.

440.1540 **Plating.** Sales of metal anodes and chromic acid to job platers who plate articles of a manufacturer’s product which is destined for resale, are sales for resale. Likewise, where a plater plates a new article for a consumer, his entire charge is taxable and sales to him of anodes and acid are for resale. However, where the plater plates a used article for a consumer and the plating metal is chrome or some other nonprecious metal, the plater is the consumer of the anodes and acids and sales thereof to him are taxable. 5/25/54.

440.1560 **Plywood Manufacture.** The manufacturer of plywood is liable for the tax on his purchase of paper tape consumed in the production of the plywood, and is not purchased for resale. 6/8/60.

440.1580 **Polyurethane Foam.** Ethyl Morpholine, Tetramethyl Butanediamine, Demethyl Farmamide, Cellosolve Solvent, Isopropanol Anhydrous, Kaydol, Methylene Chloride, Aropol #7750, N-Ethyl Morpholine, Triethylenediamine and Tetra Methyl Butane Diamine used in the production of Polyurethane Foam

PROPERTY USED, ETC. (Contd.)

are manufacturing aids and may not be purchased for resale. Trichloromofluormethane, when used in making flexible Polyurethane Foam, is considered a manufacturing aid and may not be purchased for resale. 7/6/67. (Am. M99-1).

440.1595 Property Used in Manufacturing—Negatives, etc. The manufacture of printed circuit boards involves the creation and use of negatives of the engineering and design drawings which show the actual circuitry to be imprinted on the board, assembly drawings showing the various components to be mounted on the board, and schematic drawings to be used in servicing the finished product of which the board is a part. All of these items are manufacturing aids as they do not become part of the finished product even though their images or imprints may become part of the finished product. If they are purchased from a vendor the gross receipts from the sale are taxable and a resale card should not be given. Even though most of the value of such manufacturing aids may be represented by the cost of the skilled services of technicians, draftsmen, other specialists, and the use of expensive equipment, the true object of the contract is the acquisition of the tangible personal property produced by such services and equipment. 1/18/79.

440.1600 Protein Injections. Sales of protein for injection into animals to produce certain antibodies are taxable retail sales since none of the protein becomes a component of the antibodies which are sold. 12/6/67.

440.1605 Pump Aids. Pumping aids are added to concrete mixers at the job sites to improve pumpability. Pumping aids are consumed during the pumping process and are manufacturing aids as set forth under Regulation 1525. If title to the wet concrete passes to the purchaser after delivery from the truck, the pumping aids have already been consumed by the seller and they are not resold to the purchaser even if the seller includes a separate charge for that delivered wet concrete for its overhead cost of pumping aids. 10/8/91.

440.1620 Sand Used in Preparation of Surfaces for Painting. Sales of sand for use in removal of scale and rust from manufactured units to prepare them for painting are subject to sales tax under Regulation 1525 since the sand is not physically incorporated into the manufactured item. 8/5/64.

440.1660 Soap Used in Manufacturing. Soap used to create voids in a plastic mixture, resulting in increased insulation properties of wallboard being manufactured, is purchased for a purpose other than resale. 4/30/53.

440.1662 Soap Used in Manufacturing as a Foamer. Where soap is used as a foamer in the manufacturing process, it is the presence of bubbles in the final product that is beneficial to the final product, and not the foamer. The foamer itself produces the bubbles and, thus, is beneficial in the manufacturing process but not in the finished product. Under such circumstances, the soap cannot be purchased for resale even if remaining in the finished product. 4/13/93. (Am. 99-2).

PROPERTY USED, ETC. (Contd.)

440.1668 Soap Used in Manufacturing Latex Foam Rubber Backing. In the manufacturing of latex foam rubber backing on carpet, the foaming by mechanical agitation generally requires the addition of a soap product to produce the desired froth or foam level. The primary purpose for the soap is for the foaming. After solidification of the product, the soap generally becomes an undesirable component.

In this process, the soap was purchased specifically for the purpose of a processing aid and only incidentally remains in the finished product after performing its function. Thus, the soap used in this manner is a manufacturing aid and may not be purchased for resale. 5/16/72.

440.1676 Sodium Hydroxide and Sulfuric Acid Used in Manufacturing Filters. Sodium hydroxide is used as a solvent in the manufacture of filters. It dissolves the poly carbonate membrane (film texture) creating holes. Sulfuric acid is used to neutralize the sodium hydroxide in preparing for its safe disposal at the end of the manufacturing process.

Both of these chemicals are subject to tax since they perform a manufacturing function rather than being resold prior to use (Regulation 1525(a)) 12/5/90.

440.1680 Sodium Silicate Used in Paper Production. Sodium silicate when purchased for use in a paper production process as a source of basic ions for maintaining proper pH is taxable. However, if a substantial amount of the sodium silicate remains in the groundwood pulp and imparts a desired nonabsorbency characteristic, sodium silicate purchased for such purpose may be regarded as purchased for resale. 1/24/66.

440.1700 Spring Mist Spray Applied to Drapes. Spring Mist, a liquid spray, is sold to drapers for use in removing wrinkles in drapes which they sell and install. Inasmuch as this spray evaporates after performing its function, it is regarded as sold to the drapers for consumption and not for the purpose of resale. Accordingly, such sales are taxable retail sales. 8/31/67.

440.1720 Stakes, Ties and Fasteners, sold retailer-nursery to support trees while in nursery, are used in producing, and tax applies to sale. 11/10/50.

440.1740 Steel Balls Used to Grind Sand. Forged steel balls are used in a ball mill to grind silica sand to a desired fineness. The sand becomes incorporated into a finished product which you sell. In the course of the grinding the balls wear out and all of the steel from the balls eventually becomes a part of the product.

The steel balls are purchased for the purpose of using them in manufacturing processes and not primarily for the purpose of incorporating iron into a finished product. Accordingly, the sale of the steel balls is a retail sale and subject to sales tax. 5/16/52.

440.1760 Steel Oxidizing Agents. Sodium Hydroxide, Sodium Nitrate and Potassium Nitrate used in the process of blackening steel in which the steel is immersed in a solution of the chemicals and emerges with an oxidized surface are consumed rather than resold. 8/11/64.

PROPERTY USED, ETC. (Contd.)

440.1780 **Sulphuric Acid.** The sale of sulphuric acid to a manufacturer and used as a dehydrating agent is a retail sale and subject to tax, even though subsequent to such use it is incorporated into other tangible personal property which is sold. 5/26/55.

440.1800 **Sulphuric Acid.** Sulphuric acid, remaining in solution in the same amount before and after the anodizing of aluminum, is merely used as an electrolyte and in the nature of a catalyst or vehicle for transferring the oxygen from the water to the anodized aluminum, and the sale of the acid to the user is, therefore, a taxable retail sale. 11/8/57. (Am. 2000-3).

440.1820 **Talc.** Talc used as an anti-adhesive or lubricant in the manufacture of tires is subject to sales tax as a manufacturing aid. 5/10/56.

440.1840 **Wood Pulp Products.** Although sodium silicate, epsom salts, trisodium phosphate and Versenes 80 are combined with hydrogen peroxide, they act as peroxide stabilizers before and during the manufacturing process and only incidentally remain in the finished product, and may not be purchased for resale. 7/28/65.

440.1848 **Chemicals Used in Manufacturing Cracking Catalysts.** The following chemicals are used in the manufacturing of cracking catalysts for the petroleum industry.

Ammonia and sulfuric acid. Ammonia and sulfuric acid are purchased primarily for incorporation in the finished catalyst. Although only small percentages of these chemicals are in fact so incorporated, this is a necessary consequence of the manufacturing process. Under these circumstances, the ammonia and sulfuric acid are considered nontaxable.

Caustic soda. Caustic soda detracts from the stability and activity of cracking catalysts, is usually removed during the manufacturing, and is not intended to be incorporated in the finished catalysts. Thus, its purchase is subject to tax. 9/6/77.

(b) **PROPERTY BECOMING COMPONENT PART OF FINISHED PRODUCT**
Tanning, chemicals used in, see also Fur Dressers and Dyers. Photographic processing, chemicals used in, see also Photographers, Photostat Producers, Photo Finishers and X-ray Laboratories.

(1) IN GENERAL

440.1851 **Aircraft Kit.** A firm engaged in light manufacturing plans to purchase a light aircraft kit from which to manufacture the aircraft. It will take approximately two and a half years to complete. Upon completion, it will be sold. If the aircraft kit is purchased for the sole purpose of reselling it, the firm may purchase it for resale. The subsequent sale of the completed aircraft would be subject to tax. 4/30/97.

440.1852 **Carrier Gases/Dopants.** Manufacturers of silicon wafers may purchase a mixture of carrier gas and dopants for resale. The carrier gases facilitate transportation of the toxic dopant and to control the amount of dopant

PROPERTY USED, ETC. (Contd.)

diffused into the water. It is not incorporated into the finished product. It is appropriate to allow the manufacturer to purchase the combined product for resale. The situation is analagous to paint which includes thinner. A manufacturer may purchase a paint with thinner for resale, but separate purchases of thinner only are subject to tax.

In this case, the mixture serves a dual purpose. The Board has long held that property is purchased for incorporation, even though a portion may be used in the manufacturing process, if the use in the manufacturing process is for the purpose of incorporating the property into the end product sold. 2/26/80.

440.1853 Determining Factors. In determining whether an item was used in a manufacturing process or became part of a finished product, there are two factors to consider. First is whether the item is in fact physically present in the finished product. If so, the second factor is what is the function of the item in the finished product? If it primarily serves a beneficial purpose in the finished product, and it was put in with the intention that it remain, it may be purchased for resale, even though it may also have served a secondary purpose as a catalyst. 9/16/92.

440.1854 Drill-Align Panels (Etched Panels). A taxpayer manufactures multi-layer, laminated circuit boards to the special order of its customers. The circuit boards are unfinished when the taxpayer transfers them to its customers. The customers finish the boards and then install them in electronics equipment for sale. The taxpayer makes a separate charge for drill-align panels. Since the boards are laminated, holes must be drilled in them so that circuits on each layer can be connected by lines of copper to circuits on other layers. Each hole must be drilled within .001 inch for a proper connection. Since the taxpayer does the drilling, it takes the first circuit board off the production line, places it in a drill, and drills the holes. The board is also "etched," that is, the copper cover is removed to allow visual inspection of the interior to verify that the holes were drilled correctly. If this first board was drilled correctly, the remaining boards are drilled and all of the boards, including the original drill-align board, are then transferred to the customer. The customer will specify in its purchase order for the taxpayer to drill the boards. If the customer has elected to drill its own boards, the taxpayer does not prepare or bill for a drill-align panel. However, the taxpayer may still etch one of the boards so that the customer can input the interior and verify that the boards were manufactured to specifications.

The described drill-align panel is simply one of the circuit boards manufactured to the customer's order. It happens to be the first board drilled, and is therefore inspected carefully to see that the drill was aligned properly, but it is not otherwise used in the manufacturing process. Thus, the drill-align panels are properly sold for resale and are not used prior to sale. 1/4/96.

440.1880 Incorporation into Finished Product. If the sole purpose of purchasing an item is to incorporate it into the finished product ultimately sold, the sale of the item will be treated as a sale for resale and no tax will be due even with respect to that portion lost or wasted in the manufacturing process. 5/26/52.

PROPERTY USED, ETC. (Contd.)

440.1890 Manufacturer of Prescription Medicine. A manufacturer of prescription drugs, exempt from the sales and use taxes under Section 6369, requested information regarding the application of tax to certain materials some of which are physically incorporated into the finished product, and some of which are only used and consumed in the process.

The list of materials including serum, yeast extracts, and nutrients are used in the inoculation, cell growth and fermentation processes which form the bulk proteins from which the medicines are formulated. Although only minute traces of these materials are found in the finished product and are not visible, they are purchased for the principal purpose of becoming a part of the finished product and are not subject to tax.

The list of materials including buffers, separating agents, cleaning agents, agents that kill cells or detach the cells from a flask, pH control agents, and anti-foam agents are not for the purpose of incorporation into the final product, but are for use in the manufacturing process and are consumed during that process. These materials are taxable to the manufacturer, as the consumer, when the items are purchased. 2/16/93.

440.1893 Medical Products—Commercial Fermentation Process. Cell growth and product expression occur in large vessels in the production of certain protein medical products. Growth of the cell population to production scale is facilitated by maintaining the cells in a fluid which mimics the serum environment. Maintenance and growth of the population require the addition to the vessel of nutrients, growth factors, antibiotics, products that protect the cells from mechanical damage during mixing, and other properties. Any product introduced into the mix which becomes, or a fraction of which becomes, a component of the ultimate protein product can be traced at the atomic level.

Properties which physically contribute to the end product which is sold may be purchased for resale. Products which are introduced into the vessels and contribute to the success of the fermentation process which are not resold may not be purchased for resale. The cells themselves may not be purchased for resale. 5/3/88.

440.1894 New Wine Oak Barrels—Retroactive Effect. Information submitted to the Board supported the fact that new oak wine barrels are purchased primarily for the purpose of incorporating oak into the wine, that is, for resale, and not as containers for aging wine. The Board then amended Regulation 1525, effective April 3, 1996, to recognize new oak wine barrels purchased for such purposes were purchased for resale based on existing law. There was no basis for distinguishing earlier periods from future periods since there had been no change in industry practice. Thus, the amendment to Regulation 1525 merely applies existing law to the facts found by the Board, and it is retroactive. 5/31/96.

440.1895 Solvents Used in Microfilm Manufacture. The manufacture of microfilm involves the use of several solvents, some of which remain in the finished product by intent as it improves the quality of the image produced by the film.

PROPERTY USED, ETC. (Contd.)

Generally, solvents used to create the base or “subbing” coat will be taxable as manufacturing aids as they perform their function during the manufacturing process and may remain in the finished product only because it is not practical to remove them and their presence does no harm. Other solvents used in the photo-sensitive layer are intended to remain and do remain in the finished product, although only in minor amounts, i.e., 0.5% to 1%, with the remainder used to create the base coat and then evaporating in the drying process. Two court cases have established that if some portion of a chemical is purchased for incorporation as an active ingredient or component part of the finished product, the purchase is nontaxable despite a portion of the chemical being used in the manufacturing process and then being lost or dissipated. It is immaterial that the portion remaining is a small fraction.

Based on these facts, the following chemicals used in the manufacture of microfilm are deemed to be properly purchased for resale: 80% of the methyl ethyl ketone (20% is used in the base layers); anhydrol PM; acetone; amscos PM; glycol ether PM; methyl cellosolve. (The proportion of methyl ethyl ketone resold may vary by manufacturer.) In addition, tricresyl phosphate and epichlorohydrin become part of the top layer and may be purchased for resale. Hydrochloric acid and phosphoric acid, although present in the top layer, are undesired and, as much as possible, removed from the finished product. They are subject to tax. 2/23/90.

440.1896 **Toner.** Toner which is placed in a copy machine and becomes a component part of the copies sold to customers is purchased for resale by the copy machine operator. 9/6/90.

440.1897 **Transfer Film.** A company manufactures two types of transfer film which it sells to other manufacturers. One type has lettering and designs and is transferred to customers' products in its entirety with no plastic residue. The second type has lettering and designs attached to a patternless backing. The lettering and designs are transferred to customers' products, but the backing is discarded.

Both types of film are purchased for the purpose of incorporating them into a product which is resold. It is immaterial that the backing of the second type is discarded. Both types may be sold for resale. 11/23/93.

(2) FOOD, BEVERAGES

440.1900 **Ammonium Products.** Sales of ammonium carbonate and bicarbonate to bakeries for use as leavening agents qualify as exempt sales. 1/11/63.

440.1920 **Bakery Dough Improvers.** Bakeries may properly purchase ex-tax for resale Arkady and Fermaloid dough improvers, which become an ingredient of the bakery products. 5/13/59.

440.1926 **Beer Brewing.** Ingredients used in the brew to obviate cloudiness in chilled beer or to improve the foaming qualities of the beer may be purchased for resale even though they are largely precipitated or filtered out. Examples are:

PROPERTY USED, ETC. (Contd.)

Activate	D & S Schaumade
KMS Crystals	P/L 104
Century Special	Gum Arabic
Liquidase	P/I 400
Cerevase	Heading Powder
Mitt Body Foam	Rapidose
Collopulin	Reinfirm
Papain	Tansul
Diatase	
Pepsin	

Chemicals added to brew water to improve the taste of the beer may be purchased for resale. Examples are:

Burtom Salts	Tannic Acid
Calcium Chloride	Lactic Acid
Gypsum (Calcium Sulfate)	Tartaric Acid
Sulfuric Acid	Sodium Bisulfite
Hydrated Lime	

Ingredients which are food products in themselves are not subject to tax. Examples are grains, hops, juniper berries and malt, as well as enzymes.

Products used to clarify the beer are manufacturing aids and subject to tax. Examples are:

Activated Carbon	Dicalite
Irish Moss	Tacc Sierra Snow
Colloidal Clay	Geletin
Isinglas	Inerto

Bung tins, filter asbestos, filter mass, pitch for barrel repair, returnable containers and revenue stamp protectors are not regarded as containers. Paper bottle wrappers, wooden plugs, and tap corks may be purchased for resale. 1/1/50; 5/29/96.

440.1940 **CO₂ Gas** is purchased for the sole purpose of incorporating it into a product to be sold and is so incorporated into a product to be sold, as in soda water or other beverage, the sale of the gas is exempt as a sale for resale. 8/7/52.

440.1960 **Caustic Soda.** Pretzel dough is dropped into a lye solution which causes a gelatination of this starch by the caustic soda; a film of dilute soda solution adheres to the surface of the pretzel and upon heating reacts and becomes part of the pretzel in the form of the glazed surface; as such the caustic soda is purchased by the manufacturer for resale and may be purchased ex-tax. 11/16/61.

440.1963 **Chemicals Used in Manufacture of Bakers Yeast.** A manufacturer of bakers yeast purchases the following chemicals: di-ammonium phosphate, ammonium sulfate, argue ammonia, phosphoric acid, magnesium sulfate and zinc sulfate.

PROPERTY USED, ETC. (Contd.)

Bakers yeast contains carbon, nitrogen, phosphates, sulfates, and traces of magnesium and zinc. The carbon and some amounts of other required substances are usually supplied by molasses, which have previously been considered to be nontaxable when used in yeast production. Hydrogen is supplied by ammonia or by ammonium salts such as sulfate or phosphates. Phosphates are supplied by phosphoric acid or ammonium phosphate. Sulfate is supplied in ammonium sulfates. Traces of magnesium and zinc are supplied in the form of salts such as the sulfates. Since all of these chemicals are absorbed into the yeast and are present in and an integral part of the yeast which is sold, sales of the aforementioned chemicals to manufacturers of bakers yeast are not subject to tax. 5/7/75.

440.1980 Ice Used in Manufacturing Luncheon Meat. If ice is in fact used for the sole purpose of becoming an ingredient of the finished product, as where it is used solely to supply all or a part of the water content of the sausage and luncheon meats, the sale of the ice may be regarded as a sale for resale. 9/4/51.

440.2000 Ketlube Used in Manufacturing Candy. Ketlube, a product made from animal and vegetable fats, is purchased for use in manufacturing candy. It is applied to kettles to prevent the candy from sticking while cooking and to give the cooked candy a texture which facilitates shaping, cutting, and wrapping. Since most of the ketlube becomes incorporated in the finished candy and imparts desired characteristics thereto, it is considered to be purchased for resale and not for use as a manufacturing aid. 2/10/67.

440.2020 "Liquid Smoke." Liquid smoke is considered to be sold for resale to a restaurant or other customer who applies the liquid smoke as an ingredient of barbecued meats which are to be sold. The theory is that the smoke or certain ingredients contained in it become physically incorporated into the food providing flavor to it. 8/24/64.

440.2027 Liquors. The purchase of liquors to be incorporated into chocolate products as flavoring agents is not subject to sales tax, because the liquor will be resold as an ingredient of the finished product. However, retail liquor stores are prohibited from making sales for resale pursuant to the Business and Professions Code. Purchases of this nature can be made from a licensed Industrial Alcohol Dealer. 2/2/90.

440.2040 Molasses Used in Manufacturing of Yeast. In the process of the growth and the reproduction of yeast cells, the sugar in the molasses is the food on which the yeast cells live, grow and multiply. Everything which goes into a yeast cell comes from either the sugar or the water. Accordingly, it is our opinion that the molasses is purchased for the purpose of resale. 7/7/52.

440.2080 Nitrogen Gas for Packing. The sale of nitrogen gas used in a flush process to maintain an inert atmosphere in sandwiches, chipped beef and other food products which remains in the packaged food as a preservative until opened, is an exempt sale for resale. 5/17/60

PROPERTY USED, ETC. (Contd.)

- 440.2088 **Oak Barrel Inserts/Oak Chips—Wine Making.** Oak barrel inserts (staves) and oak chips purchased for the purpose of incorporating physical flavoring elements derived from the oak into the wine as it matures may properly be purchased for resale by winemakers who will resell the wine. 12/26/95.
- 440.2095 **Phosphoric Acid Used in Manufacture of Beer.** Phosphoric acid when purchased as an ingredient of beer to be resold may be purchased for resale. 2/1/89.
- 440.2100 **Phosphoric Acid Used in the Manufacture of Yeast.** The phosphoric acid is purchased for resale, in that it has a continuous function both during the manufacturing process and until it is used in bread or other products. The acid is as necessary to the yeast after manufacture as during manufacture. 2/14/52.
- 440.2120 **Potassium Meta Bisulfite.** Sales of potassium meta bisulfite, known as KMS, to brewers for use as a preservative of beer are exempt as sales for resale. 12/8/59.
- 440.2140 **Curing Salt.** Curing salt sold to butchers for curing meat is permanently incorporated into the meat and such sales are exempt both as sales of a food product and as sales for resale. In the curing process, it is assumed that a fairly large amount of the curing salt does not become permanently incorporated into the meat but is lost or discarded. Nevertheless, this is not important. The critical factor is whether this product is purchased for the purpose of being incorporated into the meat. If this is the purpose, it is not significant that the process used entails a large amount of waste. 10/6/55.
- 440.2150 **Salt Cake and Soda Ash Used in the Manufacture of Safety Glass.** Salt cake and soda ash acquired for addition to a mix of raw materials utilized to produce safety glass are purchased for purposes of resale since they are incorporated for the primary purpose of imparting desired physical characteristics to the end product manufactured, the glass. This follows even though the process of incorporation of the salt cake and soda ash aids in the manufacture of the glass. This has been the Board's position since March 21, 1955. 1/26/73.
- 440.2160 **Salt and Lye.** Salt used for preserving olives before processing and lye used in processing olives are taxable. The final salt brine is exempt if it remains with the olives when they are sold. 1/9/55.
- 440.2181 **Salt Used in Tanning Hides.** Salt purchased by the tanner for tanning hides may not be purchased for resale. 8/17/57.
- 440.2200 **Sodium Bisulfite.** Sodium bisulfite used on potatoes to preserve their whiteness is not a food product, and its sales to consumers, for example, by grocery stores is subject to tax. However, where it is purchased by restaurants for fixing peeled potatoes so as to retard discoloration, it may properly be purchased ex-tax for resale, since the compound becomes incorporated into the potatoes. 6/11/59, 12/20/60 and 5/9/61.

PROPERTY USED, ETC. (Contd.)

440.2220 Sodium Hexametaphosphate Used in Treating Water, Manufacturers, Producers, and Processors of. Sodium Hexametaphosphate is sold to water supply companies for use in treating water. It is completely dissolved in the water and remains in solution until the water is distributed. It serves to reduce alkalinity and to prevent corrosion of supply and distribution lines. Sales of Sodium Hexametaphosphate for such purposes are exempt sales for resale. 2/26/65.

440.2240 Talc. The sale of talc for use in processing rice is a sale for resale along with or as a part of the processed rice. 4/19/54.

440.2260 Whipped Cream Chargers. These are small cartridges containing nitrous dioxide, inserted in a whipped cream container for purpose of whipping cream. They release the nitrous dioxide into the cream which thus becomes a part of the end product and the sale of the chargers is an exempt sale for resale. 12/16/55.

(3) WATER TREATMENT AND PURIFICATION—ICE

440.2300 Aluminum Sulfate (Alum) Used in Purification of Water. Aluminum sulfate (alum) is purchased by water supply companies for use in purifying water. The major portion of the molecular constituents thereof remain in the water which is sold. Accordingly, sales of aluminum sulfate (alum) to water supply companies for such purpose are exempt sales for resale. 3/25/65.

440.2320 Ammonium Chloride Used in Making Ice. Ammonium chloride is sold to ice companies for use in making ice. It is added to the water prior to freezing and remains therein as an ingredient of the ice. The function of the ammonium chloride is to keep the ice from checking and cracking.

Inasmuch as ammonium chloride used for such purpose imparts certain desired characteristics to the ice and remains as a constituent of the ice which is sold, sales of ammonium chloride for such purposes are exempt sales for resale. 2/28/66.

440.2340 Caustic Soda (Sodium Hydroxide) Used in Treating Water. Caustic soda is purchased by a city water department to control the pH of the water. Its constituents remain in the water which is sold. Accordingly, the sale of caustic soda to the water department is an exempt sale for resale. 9/30/65.

440.2360 Copper Sulphate as a Water Additive. When introduced into a city's drinking water supply copper sulphate remains in the water to the extent of about 82 percent of its total molecular weight and since it becomes a component part of the water may be purchased for resale as part of the water which is sold. 3/23/62, 4/9/62.

440.2375 Ferric Chloride Used in Treating Water. Ferric chloride used as a flocculant in treating drinking water remains in the treated water and becomes a component of the water sold. Sale of ferric chloride for this purpose is exempt from tax. 12/31/75.

PROPERTY USED, ETC. (Contd.)

440.2380 **Ferric Sulphate Used in Treating Water.** Ferric sulphate is purchased by a city for use as a flocculant in treating its water supply. The water of crystallization and sulphate constituents which comprise 72.5 percent of the ferric sulphate remain in the treated water as a component thereof. Accordingly, sales of ferric sulphate for such purpose are exempt sales for resale. 9/16/65.

440.2400 **Nuchar Aqua A.** Purchase of Nuchar Aqua A by a municipality for addition to a public water supply are taxable because the substance is a chemical catalyst within the meaning of Regulation 1525, but purchases of Poly Phosphate are exempt because it is intended to remain in the water as sold. 7/25/69.

440.2420 **Potassium Aluminate Used in Treating Water.** The major portion of the constituents of potassium aluminate used in treating a municipal water supply system remains in the water when it is sold. Accordingly, sales of potassium aluminate to the municipality are exempt sales for resale. 4/22/66.

440.2440 **Potassium Metabisulphite Used in Wine Preservation.** Potassium metabisulphite or its components become an ingredient or component part of wine when used for sterilizing and preserving it inasmuch as it forms combined or bound sulphur dioxide in the wine. 2/19/62.

440.2460 **Sodium Silicofluoride and Quicklime.** Sodium silicofluoride and quicklime used as water purifiers become component parts of the water so that they may be purchased by a city for resale to the extent that the city actually resells the water, but any water used for municipal purposes, such as swimming pools, irrigation, etc., would be consumed by the city and the tax would apply to the sale of the chemicals to the city. 1/19/62.

440.2490 **Water Treatment Chemicals.** Chlorine, sodium hypochlorite, calcium hypochlorite, calcium hydroxide and sodium hydroxide are purchased for incorporation into treated water. If the treated water is sold, these chemicals may be purchased for resale.

Sodium hexametaphosphate, activated charcoal, and kelagin are used in the process of manufacturing treated water. They are manufacturing aids the sales of which are subject to tax. 4/12/62.

(4) MISCELLANEOUS SPECIFIC COMPONENTS

440.2500 **Acetone.** Acetone used as a carrier in acetylene cylinders to prevent explosions is purchased for resale rather than consumed as a manufacturing aid. 4/6/55.

440.2505 **Additives to Wet Concrete.** An item whose sale is a taxable retail sale of a manufacturing aid when sold to a manufacturer of concrete products or to a construction contractor may, in some cases, be sold for resale when sold to a seller of wet concrete. For example, a person cannot purchase an additive for resale when an additive is purchased to assist in the hardening of concrete and not for any benefits from that additive which remain in the hardened concrete to be sold. On the other hand, that person can purchase the additive for resale if it is to

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be added to concrete that will be sold in wet form. In that case, it is the purchaser of the wet concrete who purchases the additive for functional use. Examples of such additives follow.

Water Reducing Agents. Water reducing agents are used to reduce the quantity of mixing water required to produce concrete of a given consistency. It can reduce cracking and shrinking and improves water lightness, strength, and finished appearance of hardened concrete. These benefits appear to be based upon the water reducing agent's functional benefits during the hardening process and not by virtue of benefits arising from any water reducing agent remaining in the finished hardened concrete.

Superplasticizers. Superplasticizers are specialized water reducing agents. They appear to have substantially the same functions as water reducing agents, but more and better. Therefore, the same conclusion applicable to water reducing agents is applicable to superplasticizers.

Accelerators. Accelerators are often used to accelerate the hardening of concrete during cold weather. There are no indications that accelerators have a beneficial function in the hardened concrete. Thus, the same conclusion applicable to water reducing agents and superplasticizers applies.

Air-Entraining Agents. Air-entraining agents are used to stabilize bubbles of air during the mixing process so that the hardened cement contains air pockets. These air pockets increase resistance to damage from freezing and thawing. Air-entraining agents are similar to blowing agents used in the manufacture of flexible polyurethane foam. These blowing agents are used in the manufacturing process to produce a chemical reaction and not for beneficial purpose of remaining in the final product and are manufacturing aids as set forth in annotation 440.0900. The same conclusion applicable to blowing agents is applicable to air-entraining agents. 10/8/91.

440.2516 Ammonia, Sulfuric Acid and Caustic Soda Used to Manufacture Cracking Catalysts for the Petroleum Industry. Ammonia, sulfuric acid and caustic soda are used in the manufacture of cracking catalysts which are sold to the petroleum industry. Only two percent of the ammonia and sulfuric acid remain in the finished catalyst, but their presence is necessary for the catalyst to be effective. These chemicals may be purchased for resale even though ninety-eight percent is washed out or dumped during the manufacturing process. The caustic soda detracts from the stability and activity of the catalyst. The caustic soda is therefore regarded as a manufacturing aid even though some portion remains in the catalyst. 9/6/77.

440.2520 Ammonium Hydroxide purchased for used in increasing the solubility of casein, which in turn, forms part of the coating on a specialized type of paper, becomes a component part of the paper and may be purchased for resale. 7/29/54.

440.2540 Anhydrous Ammonia, sold for use in case hardening steel by the nitriding process is a sale for resale. 5/9/50.

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440.2570 **Blowing Agents—Manufacture of Food Containers.** A manufacturer of plastic-rubber food containers purchases sodium hydrogen carbonate (aka sodium bicarbonate), citric acid and stearic acid calcium (aka calcium stearic). The products are purchased by the manufacturer as a combined product. In the course of the manufacturing process, the sodium bicarbonate disappears. The stearic acid causes the cells of the rubber and plastic to remain in small sizes so that the eventual product is smooth and then it disappears. Carbon dioxide bubbles are trapped in the plastic-rubber mixture and remain there. As the product is heated the citric acid decomposes.

Ordinarily, sodium hydrogen carbonate is property purchased for resale. The primary purpose for this product is to decompose it to extract carbon dioxide bubbles for incorporation into the product. On the other hand, the citric acid and stearic acid calcium were used as manufacturing aids and purchases of these items would be subject to tax. However, since the three products are purchased as one combined product from the supplier and 50 to 52 percent of the combined product was sodium hydrogen carbonate, the principal purpose for acquiring the product was for incorporation into the finished product and it is properly purchased for resale. 3/27/95; 5/16/95.

440.2580 **Borax Anhydrous Dust Used in Making Fiberglass.** The amount of Borax Anhydrous Dust that remained in finished Fiberglass was considered as purchased by the Fiberglass manufacturer for resale because it was purchased for the purpose of imparting the characteristic of durability in the finished Fiberglass. 8/24/67.

440.2600 **Calcium Silicon.** The use of calcium silicon in the electro-steel process to improve ductility and to change inclusion type results in a substantial incorporation of such material into the manufactured article, and hence, may be purchased ex-tax for resale purposes. 5/10/56.

440.2620 **Calcium Silicon,** sold to be used in producing castings by the Mechanite Process, is sold for resale. 3/27/51.

440.2640 **Case Hardening Compounds.** Charcoal used in the pack carburizing process, sodium cyanide used in the the cyaniding process, barium cyanide and sodium cyanide used in the liquid carburizing process and anhydrous ammonia used in the nitriding process are purchased for the purpose of incorporation into steel. That is, it appears that these compounds are purchased for their carbon or nitrogen content and that the carbon and nitrogen are physically incorporated into the steel.

Accordingly, the sale of the above-named case hardening compounds to steel manufacturers is an exempt sale for resale. 9/30/52.

440.2648 **Chemical Ingredients.** The courts have found the following chemical ingredients to be exempt from tax when purchased by the manufacturer of polyurethane foam. The ingredients were found to be resold in polyurethane foam:

Toluene Di-isocyanate (TDI)
Silicone Oils

PROPERTY USED, ETC. (Contd.)

Dimethylethanolamine (DMEA or DME)

Niax A-2 is two-thirds DME. Therefore, two-thirds is exempt.

Dabio R-8020 is 80% DME. Therefore, 80% is exempt.

Dipropylene Glycol

Niax A-1 is 30% dipropylene Glycol. Therefore, 30% is exempt.

Niax A-2 is 10% dipropylene Glycol. Therefore, an additional 10% is exempt.

Dimethylaaminophenol (0012D)

Niax A-5—35% exempt

Dabco 33LV—two-thirds exempt

Carstan 8-50. 11/15/82.

440.2652 Chemicals Used in Conversion Coatings for Steel. Conversion coatings are coatings formed on metals by treatment with suitable combinations of acids and metallic salts in dilute solutions. The coating is the result of converting the exterior metallic molecules into another chemical compound with different physical and chemical properties. Tax applies as follows to chemicals used in the process.

Leeder 374-H—Leeder 374-H is a cleaner and iron phosphating compound and is used at about 1½ ounce per gallon of water at 140°–160° F. Under these conditions, the phosphate portion which is about 80% of the formula reacts with the outer layer of iron, forming a complex iron phosphate. This coating imparts a color, increases paint adhesion and increases corrosion resistance. Leeder 374-H may be purchased for resale since its primary purpose is to form a nonmetallic coating on the metal being treated through a chemical conversion of the surface metal notwithstanding that it may to some extent perform a cleaning function prior to the actual disposition of the coating on the metal.

Leeder 272-H—Leeder 272-H is used with Leeder 374-H to control the pH in the proper range to get good disposition and improved corrosion resistance. Therefore, it is in the nature of a catalyst. It is used for purposes other than incorporation into the finished product. Under such circumstances, Leeder 272-H is regarded as a taxable manufacturing aid.

Leeder 771-H—Leeder 771-H is used in the final rinse stage to “stabilize and seal” the phosphate coating by depositing in the capillaries of the coatings itself. Since Leeder 771-H is being incorporated into the finished product, it may be purchased for resale. 5/10/71.

440.2660 Chills. “Chills,” used to fill what would otherwise be voids due to shrinkage on the inside of castings, are purchased to become a component part of the finished product and may, therefore, be purchased without sales tax for resale purposes. 12/14/54.

440.2680 Chromic Acid. If the primary purpose of purchasing chromic acid is to supply the chrome which is applied through a plating process to articles to be

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sold, the chromic acid is purchased for resale, even though the acid contains ingredients which aid in the application of the chrome to the articles. 6/29/51.

440.2690 **Coal Burned in Kilns to Make Cement.** A taxpayer burns coal in kilns used to make cement. The process of burning coal produces “flyash,” a residue which remains in the kiln after the coal is burned. It is mixed with the other ingredients used to make the cement. Flyash contains inorganic elements that are required for the production of cement, which elements would have to be purchased and added if the flyash was not present in the kiln. Based on this analysis, the portion of the coal for the primary purpose of incorporation of flyash into the finished product may be purchased for resale. If the coal is purchased tax-paid, a “tax-paid purchase resold deduction” may be taken or a claim for refund may be filed. 10/29/85.

440.2700 **Color Toners.** Sales of color toners which are applied to furniture by manufacturers and remain on it so as to become a component part of the furniture when sold are exempt. 8/3/65.

440.2720 **Copper Anodes,** supplying copper deposited upon articles being plated and sold, are properly purchased ex-tax for resale. 1/11/52.

440.2740 **Dimethylformamide** when used with dicyandiamide as a co-curing agent in the production of epoxy resin laminates is exempt from tax. 1/30/69.

440.2746 **Dual Purpose Usage of Material.** In *Kaiser Steel Corporation v. State Board of Equalization*, 24 Cal.3d 188, the Court gave clear recognition to the fact that some materials are purchased for a dual purpose, i.e., for incorporating into the goods produced and as a manufacturing aid. In producing steel, coal and coke are a heat source in the production of pig iron and a source of carbon which is important in purifying steel. There is a second purpose, that of incorporating some portion of the carbon in the finished steel. The manufacturer may purchase for resale that percentage of the coal and coke which is incorporated as carbon in the steel products sold.

Aluminum generally is used to remove oxygen from the molten metal and any incorporation of aluminum in the final product is incidental. However, in killed steel, aluminum is incorporated in the final alloy. The manufacturer may also purchase for resale that percentage of aluminum incorporated into killed steel. 9/17/80.

440.2750 **Dycastal.** “Dycastal” is a product composed of boron, oxygen, hydrogen and calcium. It is added to molten metal prior to pouring the metal into molds for the purpose of incorporating elemental hydrogen, which imparts a desired quality of strength to the finished castings. Accordingly, if Dycastal is purchased for the purpose of incorporation as an essential ingredient of the finished product, it may be purchased for resale. 10/19/84.

440.2760 **Electroplating.** Nickel Sulphate, Nickel Chloride, Coppralyte, Potassium Stannite, and Silver Cyanide used in electroplating, the metallic components of which become incorporated in finished products which are sold, may be purchased ex-tax for resale.

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Boric Acid, Caustic Potash, Potassium Carbonate, and Potassium Cyanide, used in electroplating, the components of which do not become incorporated in finished products which are sold are taxable manufacturing aids. 9/14/66.

440.2780 Etching Zinc Reducer. Etching zinc chromate primer reducer used in painting galvanized sheet becomes a part of the finished product and may be purchased ex-tax for resale. 4/8/55.

440.2800 Felting Oil. Sale of felting oil purchased for incorporation into sisal to be sold is exempt. 12/19/61.

440.2820 Flux. Flux may be used as a cleaning agent or as a means of reducing oxidation; it may also be used for transmitting desirable alloys to the deposited metal. To the extent it is used for the latter purpose, it will not be subject to sales tax. Since the different functions are not mutually exclusive exempt and nonexempt purposes may be served simultaneously and in such cases the tax will have to be apportioned between the various uses. 6/15/61.

440.2840 Formula 19020-B Synthetic Resin Paint Hardener. Sales of synthetic resin paint, together with hardener, to persons who use it to paint products which they sell are exempt sales for resale. The hardener, known as Formula 19020-B, does not evaporate, but causes the paint to set and dry by the process of polymerization, whereby it becomes a component of the painted surface. 10/26/66.

440.2860 Fuel Oil Used in Treatment of Timber. Fuel oil utilized in the treatment of timber and poles serves as a waterproofing agent and becomes part of the finished product. Under these circumstances, the fuel oil is purchased for resale and is not subject to tax. 2/16/53.

440.2880 Glass. Sand and fluorspar are substantially incorporated into finished glass and are exempt as sales for resale. The same is true as to arsenic and selenium metals which are purchased as essential ingredients. 3/21/55.

440.2888 Glass Manufacturing. Tin Tetrachloride (also described as Stannic Chloride Anhydrous, SnCl_4 Stannic Chloride, Stannous Chloride, Anhydrous Stannous Chloride, Chloride Anhydrous) is applied to the outside of a glass container immediately after it is formed and before the annealing process while the bottle is at a temperature exceeding 800° F and 1100° F. The treatment applies a very thin coating of tin oxide to the bottle surface, that, when overcoated with a thin layer of organic material, provides protection against physical damage of scratching and scuffing. Since the tin tetrachloride is purchased for the purpose of incorporating it as an integral component imparting the desired physical characteristics of strength and durability in the finished product, it may be purchased for resale. 10/31/80.

440.2920 Glue. A catalyst which becomes a component part of glue utilized in the manufacturing of furniture and remains in the finished product in its entirety, or substantially so, is purchased for resale and the sale is thus not subject to sales tax. 3/22/55.

PROPERTY USED, ETC. (Contd.)

440.2940 **Glue Ingredients and Veneer Tape Used in Manufacture of Plywood.** Glue ingredients and veneer tape used in the manufacture of plywood are a component part of the end product which is sold, rather than manufacturing aids. 8/5/64.

440.2960 **Grafting Rubber.** Grafting rubber (thin strips of rubber tied around a tree seal treated graft) is considered as being used in the process of producing the finished product and is consumed in the process of grafting plants. It does not become a component of the plant, but rather serves a function of holding a graft together while it is bonding, after which the plant discards the rubber. The finished product is the full grafted, independently viable plant. The rubber is not purchased for resale and is, therefore, subject to tax when purchased by the grafter. 4/23/69.

440.2980 **Grinding Aids,** “T.D.A.,” a grinding aid added to cement, becomes a component part of the finished product, and accordingly may be purchased ex tax for resale. 1/4/55.

440.2990 **Halftones and Photostats.** Sales tax applies to the sale of halftones and photostats to be used in producing a book because such items do not become a component part of the books. Paper, ink and binding materials do become components of the books and may be purchased for resale, without payment of tax, if the books are to be resold. 5/21/90.

440.3000 **Hydrogen, Oxygen, and Butane Gases,** sales of, to manufacturer, used in fusing glass in manufacturing “nitrogen filled” thermometers, are taxable retail sales. Sales of nitrogen, however, to be used as ingredient are exempt. 8/1/51.

440.3020 **Hydropel** is a proprietary waterproofing compound sold to manufacturers for the purpose of incorporation into concrete products. 3/20/50.

440.3040 **Ink Thinner.** Sale of ink thinner to manufacturers of ink are exempt as sales for resale. 10/19/53.

440.3045 **Iron Fines.** Iron fines are incorporated into Portland Cement clinker as part of a class of compounds known as “calcium aluminosulfates”. These compounds comprise essential ingredients of the end product which is sold.

The iron fines “aid” in the production of the cement, in that a certain amount of iron must be present in the mixture, prior to the heating stage, to ultimately produce the desired amount of aluminosulfate compounds. As such, the iron fines are not considered manufacturing aids under Regulation 1525, since the iron is a necessary ingredient which imparts a desired quality to the end product.

Therefore, when the iron is purchased primarily for the purpose of incorporation as an essential ingredient in Portland Cement clinker, which is resold, the iron fines may be purchased for resale. 9/28/84.

440.3050 **Kerosene Distillate.** Taxpayers may purchase kerosene distillate for resale without incurring a use tax liability although the distillate is injected into

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wells for well stimulation during the process of producing crude oil. Such distillate is resold as part of the crude oil to the extent that the distillate is recovered and is not dissipated as waste in the process. The critical factor is that to meet the viscosity requirements of the purchaser, as provided by the purchase contract, the distillate must be incorporated as a diluent with the heavy crude oil. While the distillate does provide a beneficial effect in the well stimulation process, the distillate must be included in the crude oil sold to meet contract specifications. Accordingly, the primary purpose for which the distillate is purchased is for resale. 10/29/85.

- 440.3060 **Lacquer.** Lacquer purchased for use as finish for tangible personal property is purchased for the purpose of incorporating it into the manufactured article to be sold and may therefore be purchased for resale.

On the other hand, lacquer thinner completely evaporates and does not remain as an ingredient of the finished product. Accordingly, lacquer thinner which is purchased for use in thinning lacquer, to be applied to articles which will be sold, is not regarded as resold with the finished articles. The tax, therefore, applies with respect to the sale of the lacquer thinner. 5/4/51.

- 440.3080 **Lacquer Thinner.** Lacquer thinner sold and used as a component part of liquid shoe polish is exempt from tax as a sale for resale. 5/4/53.

- 440.3115 **Lignin Portion of Wood Chip.** A paper manufacturer produces kraft paper from wood chips. All wood contains 20 to 30 percent lignin, which does not become a part of the kraft paper. The manufacturer burns the extracted lignin to produce process steam. The extraction of the lignin is an unavoidable result of the manufacturing process. The burning of the waste lignin does not constitute a taxable use of a portion of the wood chips since the primary purpose of the chips was to incorporate them into the paper. 4/5/73.

- 440.3120 **Lime and Limestone.** The purchaser is subject to sales tax on purchases of burnt lime and limestone which are used as flux agents to remove impurities in molten metal and combine with the impurities to form slag which is sold. The burnt lime and limestone are purchased to produce a chemical or physical reaction in manufacturing a product. The incidental production of a by-product, slag, which may be resold does not change the basic use of the chemicals so as to constitute their purchase as purchases for resale. 8/19/69.

- 440.3160 **Lumber.** Chemicals for the treatment of lumber are considered to be sold for resale to purchasers who apply them to lumber to be sold, if substantially all of the chemicals remain in the lumber and are resold with the lumber. 9/21/52.

Anti blue stain materials which form a coating on lumber, the major part of which coating remains on the lumber at the time of sale, is regarded as purchased for resale and the sale of the materials are thus exempt from tax. 6/30/54.

Anti blue stain solutions may be purchased for resale when they are used for dipping lumber which is to be sold. 9/13/54.

PROPERTY USED, ETC. (Contd.)**440.3180 Lupersol Delta—Manufacturers, Producers and Processors.**

Lupersol Delta, a mixture of 60 percent methyl ethyl ketone peroxide in dimethyl phthalate, is an oxidizing agent used as a “catalyst” or hardener for liquid synthetic resins. The sale thereof to a manufacturer of plastic boats for such purpose is a sale for resale. 7/20/67.

440.3190 Materials Used in Formulation Processes. The formulated bulk components of Product A are sodium citrate, citric acid, sodium chloride and human serum albumin. Product B’s formulation contains acidic acid, sodium hydroxide, mannitol and tween. These components along with the bulk proteins enter the bloodstream after injection of either product into the body. Product A and B are not stable in solutions without these components. They are adjuvants to product delivery and necessary to get the active proteins into the body at required strength without harm to the body.

These products are purchased for the purpose of incorporating them into the final product, and their sale for such purpose is a nontaxable sale for resale under subdivision (b) of Regulation 1525. 7/15/93.

440.3194 Materials Used in the “Capping” Step of the Manufacture of Synthetic DNA. The materials used in the capping process may be purchased for resale. While the capping materials are purchased for the purpose of preventing failure sequences from spreading in subsequent coupling steps, they are purchased expressly for the purpose of being incorporated in the synthetic DNA and a portion of the product is, in fact, incorporated into the finished product. The “beneficial effect” on the finished product is that the synthetic DNA will not then express a protein, which is not desired by the customer. 11/12/97. (M99-1).**440.3200 Metallic Salts.** Silver cyanide, copper cyanide, zinc cyanide and other metal salts used in electroplating become part of the finished product and as such, may be purchased ex-tax for resale. 7/17/56.**440.3220 Mixture of Carrier Gas and Dopant.** Manufacturers of semi-conductors purchase a gaseous mixture which is a combination of a chemical dopant and a carrier gas. The dopant portion of the mixture is incorporated as a necessary ingredient in silicon wafers which are resold. The carrier gas portion of the mixture performs the following functions prior to becoming waste: 1) acts as a carrier for dopants which cannot be shipped in their pure state because of their toxicity; 2) acts as a purifier or blanket in the manufacturing process; and 3) controls the amount of the dopant diffused into the wafer during manufacturing.

Given such facts, the entire gaseous mixture may be purchased for resale. A mixture should be considered as purchased for the purpose of incorporation into an end product even though a portion of the mixture may be used in the manufacturing process and not resold, if the portion which is used, is used only for the purpose of aiding in the incorporation of the remainder of the mixture in the end product. 2/26/80.

PROPERTY USED, ETC. (Contd.)

440.3230 **Newsprint Manufacture.** Sodium tripoly phosphate and sodium hydrosulfite (V-Brite) impart beneficial qualities to finished newsprint by their presence in the finished product. Accordingly, they may be purchased for resale by manufacturers of newsprint.

Sulfur dioxide, liquid sodium bisulfate and sodium borohydride are purchased primarily for use in the process of manufacturing newsprint. Although some amount of these chemicals may incidentally remain in the final product, they are not purchased for resale as part of the finished product. 8/7/86.

440.3240 **Organic Catalysts.** Organic peroxide catalysts which are used in curing polyester resins in the manufacture of fiberglass reinforced plastic items are physically incorporated in the manufactured article to be sold because they remain as an integral, chemically united part of the fused resin-fiberglass structure. Consequently, a manufacturer may buy catalysts for such use under a resale certificate. 8/28/64.

440.3260 **Penicillin.** Corn steep liquor and crude milk sugar (lactose) purchased for use in the production of penicillin become component parts of the penicillin. Accordingly, such purchases are not subject to sales or use tax when used in the production of penicillin for resale. 7/30/54.

440.3280 **Plastic Coatings** sold to manufacturers which become a part of the finished product are exempt sales for resale. Where reducers in separate containers are sold along with such plastic coating and used by manufacturers to reduce the coatings to proper consistency, they are manufacturing aids the sale of which is subject to tax. If a single price is charged for both items, it will be necessary to allocate to the reducer its fair retail selling price upon which tax must be paid. 3/12/54.

440.3320 **Plating Parts for Manufacturers—Producers and Processors.** Electroplaters engaged in the business of plating parts for manufacturers engaged in the business of manufacturing and selling items containing such parts are authorized to purchase for resale plating materials which become incorporated in such parts. 7/22/65.

440.3330 **Polane Catalyst.** Polane catalyst used in the manufacturing of paint serves as a hardener and becomes part of the paint sold. Therefore, paint manufacturers can purchase this product for resale. 3/11/77; 5/20/96.

440.3340 **Polyurethane Foam.** M & T Catalyst (Stannous Octate and Stannous Oleate) and Barium Sulfate used in the production of Polyurethane Foam may be purchased for resale since they become incorporated in the foam in substantial amounts. 7/6/67.

440.3345 **Potassium Compounds Used to Harden Eyeglass Lenses.** Potassium compounds are used in the process for safety treatment of eyeglass lenses. Potassium ions from the compounds diffuse onto the surface of the lenses and result in the hardening of the surface. Sale of potassium compounds for this purpose is exempt from tax. 2/6/76.

PROPERTY USED, ETC. (Contd.)

- 440.3380 **Rotogravure Modifier.** A vehicle modifier added to gravure inks in rotogravure printing substantially remains a component part of the finished printed material and as such, may be purchased tax-exempt as a sale for resale. 4/22/55.
- 440.3400 **Silver Solder Used in Manufacturing Diamond Saws.** A manufacturer of diamond saws purchased silver solder for the purpose of bonding diamond-impregnated steel cutting segments to the edge of a saw disc. The sale of the solder to the manufacturer was an exempt sale for resale inasmuch as the solder became an integral part of the saw. 11/12/64.
- 440.3420 **Sodium Bicarbonate Used in Sponge Rubber.** Sodium bicarbonate purchased by the manufacturers of sponge rubber padding is exempt inasmuch as its principal purpose in the manufacturing process is to impart resiliency to the padding 1/4/62.
- 440.3437 **Sodium Hydroxide.** In the sulfonation process, sodium hydroxide is added to sulfonic acid to produce sodium sulfonate. The sodium portion of the sodium hydroxide becomes the sodium portion of the sodium sulfonate. Thus, sodium hydroxide becomes an ingredient of sodium sulfonate, the manufactured item to be sold. The use of the sodium hydroxide as a pH neutralizer is incidental to the primary purpose of incorporating it into the sulfonic acid to create sodium sulfonate. Under these circumstances, tax does not apply to the sale of this product to a manufacturer of sodium sulfonate who in turn will resell the manufactured sodium sulfonate. 12/11/96.
- 440.3440 **Sodium Hypophosphite Used in Electrolysis Nickel Plating.** Sodium hypophosphite, used in electrolysis nickel plating, is the source of phosphorus which is incorporated in, and imparts desired properties to, nickel plate. Accordingly, sales of sodium hypophosphite for use in electrolysis nickel plating of articles to be sold are exempt sales for resale. 11/15/67.
- 440.3460 **Sodium Silicate Used in Paper Production.** Sodium silicate when purchased for use in a paper production process as a source of basic ions for maintaining proper pH is taxable. However, if a substantial amount of the sodium silicate remains in the groundwood pulp and imparts a desired nonabsorbency characteristic, sodium silicate purchased for such purpose may be regarded as purchased for resale. 1/24/66.
- 440.3470 **Spray Hardener.** Spray hardener, when mixed with vinyl metal primer, causes the primer to harden by virtue of incorporation of its constituents in the primer. That is, the purchaser seeks the benefits of incorporating the hardener into the finished product. Accordingly, sales of spray hardener to persons who use it for painting articles which they sell are nontaxable sales for resale. 2/23/68.
- 440.3480 **Sulfuric Acid Used in Production of Aluminum Fluoride.** Taxpayer produced aluminum fluoride from aluminum oxide, supplied by its customer, and hydrofluoric acid, which taxpayer manufactured from its own sulfuric acid and

PROPERTY USED, ETC. (Contd.)

calcium fluoride. In the chemical reaction between the sulfuric acid and calcium fluoride, calcium sulfate was also produced, which taxpayer sold to a third party.

Although the hydrogen ions in the sulfuric acid served as a carrier for the transfer of the fluorine ions to the aluminum fluoride, nevertheless the sulfuric acid is regarded as having been purchased for resale, inasmuch as the sulfate ions simultaneously become a component of calcium sulfate which taxpayer manufactured and sold. 11/10/64.

440.3500 Surface Preservative. Material used as a surface preservative for fan blades being manufactured may be bought for resale if the material is applied to the blades and remains thereon as a surface preservative when the blades are sold even though many other companies use the product as a cleaning agent. 8/1/52.

440.3520 Toluene, MEK and Nitropropane Used in Manufacturing of Vinyl Sheeting. Methyl ethyl ketone (MEK), nitropropane, acetone, toluene, isopropyl acetate (IPA), and steric acid are essential components of vinyl sheeting and vinyl coated fabrics and are properly purchased for resale. Mineral spirits (lactol spirits and lacquer diluent) are manufacturing aids used in producing vinyl sheeting and vinyl coated fabrics and may not be purchased for resale. 5/19/76

440.3540 Toluene Sulfonic Acid and Butyl Phosphoric Acid Used in Wood Finishing. Resin coating materials are sold to furniture manufacturers for use as high-speed wood finishes. These materials are sold in two packages, a resin compound and a "catalyst." Since the active constituents of the "catalyst," toluene sulfonic acid and butyl phosphoric acid, become incorporated in the polymerized film coating, sales thereof for such purpose are exempt sales for resale. 12/23/64.

440.3560 Total Manufacturing Process—Gasoline Distillate. Where, during the process of refining petroleum products, gasoline distillate is derived from the process, run through pipes to pick up wax, and is later refined and sold (as is the recovered wax), the purchase of the distillate or the products from which it is refined is not subject to tax as self-consumed. The process of running the distillate through the pipes is part of the total manufacturing process. 7/16/64.

440.3600 Vehicle Modifiers. The sale of vehicle modifiers used in rotogravure printing is considered a sale for resale when substantially all of such modifier remains in the ink and is therefore sold along with the sale of the printed matter. 11/9/55.

440.3620 Waxes. If wax is purchased for the purpose of physically incorporating it into fruit and vegetables, to be used as a coating over such products, and to be used as a preservative and to give a shine to such products by enhancing their appearance, the sale of the wax may properly be regarded as a sale for resale. 9/26/52.

440.3640 Wax Emulsion. Wax emulsion sold to lumber mills to be sprayed on the ends of new lumber for curtailment of "end-check," may be regarded as sold for resale provided substantially all of such product remains on the lumber when the latter is sold. 11/7/55.

PROPERTY USED, ETC. (Contd.)

440.3660 **Welding Rod.** Welding rod used in manufacturing and which becomes incorporated into the manufactured product may be purchased ex-tax for resale purposes. 6/20/55.

440.3670 **Wine Making Chemicals.** Tartaric acid, citric acid, tannin (when added for the purpose of increasing the body and astringency of the wine), sulfurous acid or its salts such as metabisulfite, or dimethyl dicarbonate (when added to check wine diseases), and oxygen gas (when used for the purpose of aging) become component parts of wine and may be purchased by wineries for resale.

Chemicals which are used to process wine and which do not become component parts of the finished product, such as tannin (except as indicated above), casin, gelatin, isinglass, and bentonite are manufacturing aids and their sales are subject to tax. When used to control the fermentation process, chemicals such as charcoal, metabisulfite, and sulfur dioxide are manufacturing aids the sale of which are subject to tax. The sales of neutralizing agents such as potassium carbonate, calcium carbonate, and magnesium carbonate are also taxable. 7/7/36; 5/29/96; 11/19/97. (Am. M99-1).

440.3673 **Wine Making—Oak Chips and Innerstaves.** Oak chips and oak innerstaves used by wine makers to impart unique flavors in wine are considered to be purchased for the purpose of incorporating flavor elements derived from oak into wine as it matures. Neither the tank innerstaves nor the chips perform another functional purpose other than to impart flavor in the wine. Thus, the oak innerstave and chips may properly be purchased for resale pursuant to Regulation 1525(b). 3/22/96

440.3680 **Wood Pulp Products.** Zinc hydrosulfite, sodium hydrosulfite and hydrogen peroxide purchased by a paper products manufacturer for decolorizing wood pulp, combine with colored constituents of wood pulp and remain in the finished product. Accordingly, zinc hydrosulfite, sodium hydrosulfite and hydrogen peroxide are purchased for resale. 7/28/65.

PUBLICATIONS

See Newspapers and Periodicals.

442.0000 PUBLISHERS—Regulation 1543

442.0016 **Artwork and/or Negatives Sold to Lessor.** When artwork and/or negatives are sold to a lessor without payment of sales tax, the lease by the lessor to a lessee would be subject to the tax.

If the lessor desires to pay tax on its acquisition and thus avoid tax on the lease transaction, the measure of tax with respect to the acquisition would include all amounts required to be paid by the lessor, including the amount paid for any reproduction rights. 12/12/90.

442.0041 **Charges to Publishers.** Charges for consultation, preliminary design supervision, preliminary design, copy editing, coding and preliminary layout are all charges for author or design services which are regarded as services related to

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the sale of tangible personal property. Tax applies to these charges unless the charges are separately stated and neither title nor possession of layouts is transferred to the customer other than briefly for purposes of review and approval.

Charges for converting text files to make them compatible with a word processing program are charges for work that is part of typography which is a "production function" as that term is defined in Regulation 1543(a)(4). The charges for typography are part of the gross receipts from the finished product unless the work is completed before authorization is given for completion of the final product. (See Regulation 1543(b)(3)(B).

Charges for production management, final composition, corrections, film positives or negatives, photography and other materials are taxable. 8/10/94.

442.0050 Concept Development. A charge for writing copy, (e.g. an outline of the points to cover in final copy, etc.) which will be incorporated as part of tangible personal property, may be excluded from the taxable measure as nontaxable author services if the advertising agency or designer follows the criteria of Regulation 1543(b)(4) which sets out the necessary terms of the contract and the standard of proof which are necessary for the exclusion to apply. 3/31/93.

442.0250 Licensing Rights to Reprint Articles. A publisher of publications licenses to others the right to reprint information contained in its publications. Tax does not apply to the publisher's charges to a person solely to provide that person with the right to reprint information contained in the publisher's publications. 3/27/97.

442.0500 Photographs Reproduced in Quarterly Report. A photographer is commissioned to take product photographs to be printed in a corporate quarterly report. By agreement, the corporation receives only the right to reproduce the photograph but not the title to the photograph.

The photograph does not become an ingredient or component part of the quarterly reports. Only the image of the photograph is reproduced as a part of the quarterly reports. The reproduction of the photograph is a use of that photograph.

Since only possession and not title to the photograph is transferred, the applicable tax is the use tax. The photographer, as the lessor, is required to collect the tax from the corporation and report and pay the tax to the board. 8/5/93.

442.0810 Services to Publishers. A taxpayer receives an author's paper manuscript and word processing disk files from a publisher. The paper manuscript is edited and sent to the author for approval. The corrections are entered onto the original computer disk files. Page layouts are prepared, including any computer generated illustrations that are required. Proofs are then printed by computer and copies are sent to a proofreader, the publisher, the author, and an indexer. Corrections are returned, the computer files are changed, and new proofs are printed for confirmation. The file is then sent to local firm for production of lithographic film negatives. The film is returned for inspection and

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packaging. The film and the proofs are then sent to an out-of-state printer. The contract provides that title to all tangible personal property purchased as manufacturing aids passes to the publisher prior to use by the taxpayer.

When the tangible personal property is sold to the publisher in this state, tax applies to this sale regardless of the fact that the final product is shipped to a point outside this state. This includes conversion of data from IBM to Macintosh compatible when subcontracted to a third party and sets of photocopies sent to the proofreader, publisher, author and indexer which are shipped to persons in this state. It does not include the lithograph film if no use is made prior to shipment outside the state. Inspection and packaging of the film would not be a "use." 10/19/94.

442.0870 Transfer of Text and Artwork. A taxpayer was a writer of educational periodicals. The taxpayer entered into an agreement with a producer to compile and coordinate research, information, original artwork, photographs and mechanical art necessary for production of a series of related illustrated books. The agreement specifically provided that the taxpayer was not responsible for color separations, stripping or printing. The taxpayer was authorized to hire artists and to make purchases as necessary. The agreement provided that the publisher would own all original artwork and photography commissioned by the taxpayer, and that the petitioner would act as agent of the publisher in making purchases of art.

Since the taxpayer was an agent of the publisher in obtaining artwork, he is not regarded as selling artwork to the publisher. Also, under Regulation 1543, the transfer of manuscripts is not taxable. Accordingly, tax did not apply to any charges made by the taxpayer to the publisher. 7/12/94.

442.1000 Writing Words Only. A taxpayer is in the business of writing print ads and brochures for clients. The taxpayer submits work to clients in typed form or on a computer disc. The clients then turn the taxpayer's work over to a graphic designer who incorporates the written words into the final artwork. In summary, the taxpayer simply writes the words that are made part of the finished product by someone else.

Since the taxpayer provides words (text only) to its clients, the taxpayer is considered an author performing nontaxable services. 1/27/94.

PURCHASERS

See Payment of Tax by Purchasers.

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SALES AND USE TAX ANNOTATIONS